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CPT/Inf (2022) 03

## **Report**

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

**from 9 to 19 March 2021**

The Government of Serbia has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2022) 04.

Strasbourg, 10 March 2022

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## EXECUTIVE SUMMARY

In the course of its fifth periodic visit to Serbia, the CPT's delegation examined the treatment and safeguards afforded to persons detained by law enforcement agencies. It also looked into the treatment and conditions of detention of persons held in three prison establishments, both on remand and sentenced. A further focus of the visit was the treatment of and living conditions for psychiatric patients under civil and forensic measures and residents of social care homes. Further, the delegation assessed the impact of the measures taken to prevent the spread of Covid-19 in these establishments.

The co-operation received during the visit by the CPT's delegation was very good. However, more effective action should be taken by the Serbian authorities to implement the Committee's recommendations as regards combatting ill-treatment by police officers. There is also the need to accelerate the implementation of the nascent reforms regarding the treatment of persons held in remand detention. The Committee's recommendations in relation to the legal safeguards of patients hospitalised or treated against their will in psychiatric hospitals and in social care homes, should also be addressed.

### **Police**

The CPT's delegation once again received a significant number of credible and consistent allegations of torture and other forms of ill-treatment of detained persons by police officers. The alleged ill-treatment consisted of slaps, punches, kicks and truncheon blows as well as the application of electroshocks by hand-held devices and electric cables connected to a car battery and placing persons in stress positions during interrogations. The allegations were supported, in particular, by documentation examined at police establishments and of detailed injury reports recorded by prison health care staff.

While recognising the efforts of the Serbian authorities to tackle police ill-treatment, the CPT recommends that a series of more resolute measures be adopted including: a formal statement at the highest political level on zero tolerance towards police misconduct; targeted training activities on issues such as the practical aspects of the prevention of ill-treatment; and the introduction of an investigative interviewing approach of criminal suspects. Further, a more stringent oversight of the *modus operandi* of police inspectors of the Belgrade anti-narcotic police department is imperative. The mandatory audio and video recording of all police interviews should also be introduced.

The effectiveness of investigations carried out into allegations of police ill-treatment was examined to ascertain the progress made since the CPT's 2017 visit. An analysis of numerous investigative files revealed that in too many instances, prosecutorial investigations into possible violations of Articles 136 and 137 of the Criminal Code failed to comply with the criteria of effectiveness as set out in the Methodology on the Investigation of Cases of Ill-Treatment adopted by the Serbian authorities in 2018. The CPT considers that Articles 136 and 137 of the Criminal Code should be amended in line with Article 1 of the United Nations Convention against Torture. Further, the CPT recommends that prosecutors and police oversight mechanisms, when carrying out investigations into cases of alleged ill-treatment be more thorough, comprehensive, and expeditious. All prosecutors and investigators should be trained on the Methodology on the Investigation of Cases of Ill-Treatment. The CPT also raises concerns over the leniency of sentences imposed by courts on police officers convicted of ill-treatment.

As regards safeguards against ill-treatment (i.e. the right of notification of custody and the rights of access to a lawyer and a doctor), most detained persons interviewed by the delegation indicated that a relative or another trusted person was notified shortly after their apprehension. However, action is required to guarantee the right of access to a lawyer as from the very outset of detention and for detained persons to speak in private with their lawyer. Steps should also be taken to ensure that medical examinations are always conducted out of the hearing of police officers, visible injuries observed on detained persons accurately recorded in the relevant minutes on detention and that all persons are fully informed of their rights as from the very outset of their deprivation of liberty. Further, custody records should be diligently filled out and a code of conduct on interviews by the police adopted, together with stricter reporting requirements on the use of means of coercion by police officers.

The CPT notes positively the improvements in the conditions of the detention facilities, notably in the Belgrade area, and the rolling plan for refurbishment of all police custody areas.

## **Prisons**

The CPT welcomes the measures taken by the Serbian authorities to reduce prison overcrowding and to upgrade the prison estate, including through the construction of new prisons or new pavilions within existing establishments. The new Pančevo Correctional Institution stands out as a model prison in terms of design and material conditions. That said, local overcrowding and poor conditions of detention consisting of cramped, dilapidated and unhygienic cells while sanitary facilities remained visible in certain parts of Belgrade District Prison and Požarevac Correctional Institution. The Serbian authorities should remedy these deficiencies and accelerate their refurbishment programme.

As regards the recent legislation introducing the sentence of life imprisonment without parole, the CPT recommends that it be amended to permit all persons sentenced to life imprisonment to be offered the hope of being granted conditional release, in line with the case-law of the European Court of Human Rights and the Committee's long-held views on this matter.

Most prisoners stated that they were treated correctly by prison officers. However, a few allegations of physical ill-treatment and excessive use of force by staff against prisoners were received at Pančevo and Požarevac Correctional Institutions. The authorities should ensure that prison staff strictly comply with the basic principles on the use of means of restraint and that all use of force is fully documented and subject to rigorous oversight.

Inter-prisoner violence and intimidation remains widespread, and the Serbian authorities should elaborate an effective national strategy to tackle this phenomenon, which should include addressing the impoverished regime on offer to prisoners and understaffing as well as the growing trade in psychoactive substances.

The CPT is once again critical of the impoverished regime on offer to remand prisoners. Recent steps taken at Pančevo Correctional Institution to involve remand prisoners in a remunerated activity and to offer them sport in the gym on a regular basis should be expanded and extended to all prisons. As regards sentenced prisoners, the report notes the efforts invested to enlarge the offer of purposeful activities and to develop an individualised approach towards their treatment as well as a more equitable system of prisoner classification. That said, action should be taken to remedy the absence of rehabilitation activities for prisoners serving long-sentences, notably those accommodated at Pavilion VII of Požarevac Correctional Institution where a lack of activities results in them being unable to progress in their regime classification.

At the Special Regime Detention Unit of Požarevac Correctional Institution, the CPT noted improvements as regards the professional attitude of staff, a more relaxed atmosphere and better equipped communal facilities. However, a wider range of purposeful activities of a rehabilitative nature should be offered. Further, visiting and telephone entitlements for prisoners should be increased. The CPT also considers that the renewal of the placement in the special regime should be better reasoned and contain additional safeguards.

The CPT noted an improvement in the provision of health care in prisons, notably as regards adequate conditions in the infirmaries, satisfactory staffing levels and better recording of injuries upon admission to prison. Nevertheless, certain longstanding shortcomings require attention such as the lack of a comprehensive strategy for the provision of assistance to prisoners with drug-related problems (easier initiation of substitution therapy, access to psycho-social rehabilitation activities and harm reduction programmes) and difficulties in accessing specialised treatment for prisoners with transmissible diseases. Health care staff should also stop collecting urine samples for drug screening from prisoners at the request of custodial officers.

The report also addresses the professionalisation of prison management. Further, recommendations are made to improve the regime and the review process for the placement of prisoners under an enhanced supervision measure, to reduce the maximum duration of solitary confinement for disciplinary offences to no more than 14 days and to increase both the visit entitlements for sentenced prisoners and the legal provision for access to the telephone for remand prisoners. Finally, the CPT notes the new competences of the supervisory judge to visit prison establishments and to speak with prisoners in private and it reiterates the importance of supervisory judges being an impartial and independent oversight of prison practices.

As regards the Special Prison Hospital Belgrade, the CPT noted that while most patients spoke positively of the staff, some allegations of excessive use of force were received in the context of the use of mechanical restraints. Further, while inter-patient violence had decreased since 2015, the continuing lack of privacy and overcrowding led to tensions and occasionally to some violence. Indeed, urgent measures should be taken to reduce the number of patients at the hospital, to decongest the cramped dormitories and to improve the material conditions, notably the dilapidated and filthy communal bathrooms.

Access to fresh air is essential for the well-being and mental health of patients and yet it was not even being offered daily to patients. The CPT considers that all patients should benefit from unrestricted access during the day to outdoor exercise.

As regards treatment, the CPT again urges that an individual treatment plan be drafted for each patient, with their involvement, which should be reviewed and updated on a regular basis. There is also a need to make further efforts to develop the range of psycho-social activities for psychiatric patients, including occupational therapy. While efforts had been made to reduce the use of seclusion and fixation, there is still a need for the Prison Hospital to revise the written guidelines and practice on the application of mechanical restraint in line with CPT criteria.

The CPT found that three minors (two boys and a girl) were being held with unrelated adults in large dormitories and provided with no specific support or attention by staff. Measures should be taken to ensure that minors are no longer held with adults and that they are provided with a regime and treatment in line with their age and needs.

## **Psychiatric establishments**

Most patients met spoke positively about the staff. Nevertheless, a few allegations of physical ill-treatment and verbal insults by staff were received at both the Laza Lazarević Psychiatric Clinic and the Bakalović Special Psychiatric Hospital.

Living conditions were generally decent at Laza Lazarević whereas at Bakalović they were more variable with certain wards requiring urgent measures to upgrade the sanitary facilities. Efforts also need to be made to enable patients to personalise their environment and to provide them with a modicum of privacy. At the Laza Lazarević Belgrade site, patients should be allowed to wear their own clothes and be provided with daily access to an outdoor area.

As regards treatment, pharmacotherapy was of good a standard but, following the restrictions of the Covid-19 pandemic, there is a need to develop a range of therapeutic options and involve long-term patients in rehabilitative psycho-social activities, in order to prepare them for independent life or a return to their families. Patients should have unlimited access to fresh air at both hospitals. In respect of staff, the number of nurses and auxiliaries should be increased at Bakalović Hospital to ensure a greater presence on the wards during the day, and more resources should be invested into the provision of initial and ongoing training for staff.

With regard to means of restraint, there is a need to review the written guidelines and practices regarding the use of mechanical restraint in accordance with the criteria set out by the CPT to ensure that patients are not fixated in front of other patients and that the measure is appropriately recorded, limited in time, properly supervised and applied by trained staff.

The CPT puts forward a series of measures that the Serbian authorities should take to reinforce the safeguards surrounding the placement and consent to treatment of involuntary psychiatric patients. It also considers that effective measures should be taken to set up appropriate structures in the outside community for patients who no longer require hospitalisation.

## **Social care institutions**

At the outset, the CPT stresses that a large-capacity establishment isolated from the local community, such as the Home for mentally impaired adults in Kulina, should be taken out of service as soon as smaller facilities can be made available for the residents. More generally, resolute steps to reorganise the social care system and to develop appropriate solutions in the community must be taken.

On a positive note, residents at both Kulina and the Home for Children and Youth “Duško Radović” in Niš, spoke positively of staff and staff displayed a caring attitude.

Living conditions at Radović Home were of a decent standard and pleasant. The two renovated wards at Kulina Home were similarly good whereas the standard of hygiene, state of repair and furnishings in the other wards, notably the Women 2 and Men 1 Wards, were appalling and in need of urgent refurbishment. Activities at both Homes should be enhanced, and residents should have an individualised programme of rehabilitative activities. Access to fresh air for all residents should be improved, including for those residents with physical impairments.

The safeguards surrounding the placement of residents and the operation of the guardianship system remain deficient. Action is required to ensure that placement decisions in care homes are subject to regular court reviews and deprivation of legal capacity procedures should be strengthened in favour of the person concerned.



## I. INTRODUCTION

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

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Serbia from 9 to 19 March 2021. The visit formed part of the CPT’s programme of periodic visits for 2021 and was the Committee’s fifth periodic visit to Serbia.<sup>1</sup>

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

- Mykola Gnatovskyy, Head of Delegation
- Julia Kozma
- Marie Lukasová
- Alexander Minchev
- Slava Novak
- Aleksandar Tomčuk.

They were supported by Christian Loda and Julien Attuil-Kayser of the Committee's Secretariat, and assisted by Jake Hard, General Practitioner working in prisons in Wales, United Kingdom (expert)

3. A list of the establishments visited by the delegation is set out in Appendix I to the report.

4. The report on the visit was adopted by the CPT at its 105<sup>th</sup> meeting, held from 28 June to 2 July 2021, and transmitted to the Serbian authorities on 22 July 2021. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the Serbian authorities to provide within six 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.

As regards the recommendation in paragraph 164 of the report, the CPT requests that an account of action taken to implement it be provided within three months.

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<sup>1</sup> The CPT has previously carried out four periodic visit (2004, 2007, 2011 and 2015) and one ad hoc visit (2017) to the country. The reports on these visits and the responses of the national authorities have all been made public and are available on the Committee’s website: [The CPT and Serbia \(coe.int\)](https://www.coe.int/t/e/torture/serbia.aspx).

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

5. In the course of the visit, the delegation held consultations with Vladimir Rebić, Director of Police, Dejan Kovačević, Assistant Minister and Head of the Sector of the Internal Control of the Ministry of Interior, Dejan Carević, Director of the Administration for the Enforcement of Criminal Sanctions of the Ministry of Justice, Jelena Janković, Assistant Minister for Health, and Biljana Zekavica, Acting Assistant Minister for Social Protection, Ministry of Labour, Employment, Veteran and Social Affairs.

The delegation also met with Jelena Stojanović, Deputy Protector of Citizens and Nataša Tanjević, Head of the National Preventive Mechanism (NPM).

A list of the national authorities and other bodies met by the delegation is set out in Appendix I to the report.

6. The co-operation received by the delegation throughout the visit was very good in all the establishments visited. The delegation enjoyed rapid access to all the establishments it wished to visit (including those which had not been notified in advance), was able to interview in private persons deprived of their liberty and was provided with the information it needed to accomplish its task. However, on the day of the delegation's visit to the Padinska Skela site of the Laza Lazarević Psychiatric Clinic, it appeared that five patients, who could be considered as querulous by the management, were transferred out of the facility for the day without any verifiable medical reason.

7. 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. In this connection, the CPT welcomes the progress made since its 2015 periodic visit as regards the treatment and living conditions of sentenced prisoners and activities offered to them as well as regards many aspects pertaining to psychiatric patients. However, several long-standing recommendations of the CPT have still not been implemented, notably in relation to the legal safeguards of patients hospitalised or treated against their will in psychiatric establishments or of unvoluntary residents in social care homes.

Further, 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 accelerate the implementation of the nascent reforms regarding the treatment of persons held in remand detention. Having regard to Articles 3 and 10, paragraph 2, of the Convention, the CPT trusts that the Serbian authorities will take concrete measures to address the long-standing issues referred to above.

**C. 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 Serbian authorities. On that occasion, the delegation made three immediate observations under Article 8, paragraph 5, of the Convention, notably:

- to transfer the minors held at the Special Prison Hospital in Belgrade to an appropriate environment where they will be afforded the care and support they require;
- to ensure that all patients of the Special Prison Hospital, whose medical condition so permits, are offered access to fresh air outdoor on a daily basis;
- to ensure that all patients in Laza Lazarević Psychiatric Clinic and Special Hospital for Psychiatric diseases "Dr Slavoljub Bakalović", whose medical condition so permits, are offered outdoor fresh air daily.

9. These requests were confirmed in a letter dated 31 March 2021 and the authorities were given two months to reply. The Serbian authorities supplied the information requested in one communication received on 23 June 2021. The information contained in those responses had been taken into account in the drafting of this report, in particular in paragraphs 120, 141 and 164.

**D. National Preventive Mechanism**

10. During its 2021 periodic visit to Serbia, the CPT's delegation met with senior staff of the Office of the Protector of Citizens which pursuant to the relevant legislation performs since 2011 the task of NPM.<sup>2</sup> The CPT's delegation noted that the NPM now formed an independent department of the Office of the Protector of Citizens staffed by six full-time advisors who carried out exclusively NPM-related tasks.<sup>3</sup> Further, the NPM continued to avail itself of the assistance of experts such as psychiatrists and forensic doctors and a memorandum on co-operation with non-governmental organizations (NGOs) had been renewed in 2018. That said, at the outset of its visit, the CPT's delegation was informed that two NGOs<sup>4</sup> had withdrawn in 2018 from the above-mentioned memorandum over their dissatisfaction with the methodology employed for visiting police establishments and assessing alleged police misconduct of detained persons. **The CPT would appreciate the view of the Office of the Protector of Citizens on the impact to its work caused by the withdrawal of two NGOs from the memorandum of co-operation with the NPM. Further, in the light of the CPT's findings in relation to police ill-treatment (see paragraph 17) during its 2021 periodic visit, the Committee would also like to receive the comments of the NPM in relation to its methodology on the monitoring of the treatment of persons in police custody.**

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<sup>2</sup> Serbia ratified the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2006. The Office of the Protector of Citizens (Ombudsman) was officially designated as National Preventive Mechanism by the National Assembly of the Republic of Serbia in July 2011 and carried out its first visit in February 2012.

<sup>3</sup> Following to the adoption in 2018 of a new Rulebook on the Internal Organization and Systematization of the Personnel of the Office of the Protector of Citizens.

<sup>4</sup> the Belgrade Centre for Human Rights (BCHR) and Mental and Disability Rights Initiative of Serbia (MDRIS).

11. In terms of activities, the NPM conducted a total of 83 visits<sup>5</sup> in the course of 2020. In addition to its regular reporting, the NPM had also recently produced two thematic reports respectively in December 2020 on the treatment of inmates using psychoactive substances (see paragraph 88) and in May 2020 on the application of the CPT principles in the context of the Covid-19 pandemic which are both reflected in the current report.

#### **E. Response to the Covid-19 pandemic**

12. At the outset of the visit, the CPT's delegation was informed by the Serbian authorities about the measures undertaken in relation to the prevention of the propagation of the Sars-Cov-2 virus in different places of deprivation of liberty. A similar protocol was implemented in prisons, psychiatric hospitals, and social care homes. It consisted inter alia of systematic body temperature checks of all persons entering the establishments, distribution of protective equipment to persons deprived of their liberty, and 14-day mandatory quarantine periods of newly and re-admitted persons in designated units. In the prison context, compensatory measures were taken for the temporary suspension of visits and increased resort to alternative sanctions by the judicial and prosecutorial authorities.<sup>6</sup>

The information gathered by the CPT's delegation indicates that the Serbian authorities adopted an appropriate response to the Covid-19 pandemic in places of deprivation of liberty by taking timely preventive measures and reacting promptly whenever cases were detected during the first and second waves of the pandemic in 2020. There was evidence of good co-operation with the national health-authorities in terms of mass testing, diagnostic investigations and provision of specialist treatment and prompt hospitalisation in relation to persons displaying severe symptoms of the disease.<sup>7</sup> Further, the CPT's delegation took positive note of the efforts being made to vaccinate persons deprived of their liberty and staff working in places of detention. The vaccination of approximately 4,000 prisoners was ongoing at the time of the visit and all prisoners who expressed a wish could opt for one of the two vaccines on offer. Further, around 30 % of staff serving in prisons had already been vaccinated at the time of the visit. Patients and residents were supposed to receive their first vaccination dose few weeks after the visit.

The CPT acknowledges the significant measures undertaken by the Serbian authorities and staff working in places of deprivation of liberty to prevent the widespread propagation of the Sars-Cov-2 virus. Likewise, the understanding of persons deprived of their liberty in putting up with even more restrictions during the pandemic should also be recognised.

**The CPT would like to be provided with updated information on the effects of the Covid-19 pandemic in Serbian places of deprivation of liberty for both staff and persons held in prisons, psychiatric establishments and social care homes. Further, the Committee encourages the Serbian authorities to ease the restrictive measures imposed in places of deprivation of liberty due to the Covid-19 pandemic as soon as appropriate. In this respect, visits to persons deprived of their liberty should be resumed as a matter of priority.**

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<sup>5</sup> I.e., 48 police establishments, 22 prison establishments, 3 social care establishments, 9 psychiatric establishments and 9 immigration and refugee collective centres.

<sup>6</sup> The Serbian authorities had resorted to the early or temporary release of 656 prisoners in the context of the pandemic and had increased the application of alternative measures to detention such as house arrest.

<sup>7</sup> For example, ten inmates had developed severe symptoms at Požarevac Correctional Institution in November 2020 out of whom two had died (both belonged to risk groups).

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

### A. Law enforcement agencies

#### 1. Preliminary remarks

13. The legal framework surrounding the deprivation of liberty of persons by police officers remains essentially the same as at the time of the 2017 visit. The 2013 Code of Criminal Procedure (CCP) tasks the police with bringing an arrested criminal suspect without delay and within a maximum period of eight hours before a prosecutor.<sup>8</sup> It is the prosecutor or the police upon the approval of the relevant prosecutor, who decides to keep a criminal suspect in police custody for up to 48 hours and the decision on detention (*rešenje o zadržavanju*) must be served to the suspect within two hours from the moment of deprivation of liberty.

The police may also summon a person to a police station for the purpose of obtaining information, for a period not exceeding four hours.<sup>9</sup> When a reasonable suspicion exists that the summoned person is the perpetrator of a criminal offence, he/she may be summoned only in the capacity of a suspect and shall be advised accordingly. In such a case, the summoned person has the right to a legal counsel in accordance with Article 289 of the CCP.

In addition, Article 190 of the Law on Misdemeanour Offences allows the detention of a person by the police for up to 24 hours if the identity of the person cannot be established or there is a risk of absconding or of a reiterated offence. Finally, the police also have the right to detain persons on the basis of the Law on Road Traffic Security for a maximum period of 12 hours.<sup>10</sup>

14. At the outset of the visit, the Serbian authorities informed the CPT's delegation about the action taken to implement the recommendations contained in the Committee's 2017 visit report, notably as regards combatting police ill-treatment. Of particular note are the adoption in 2019 of the Rulebook on Police Powers (RPP),<sup>11</sup> the development of specific training modules for police officers and judicial authorities on torture prevention and accountability including on the enhancement of interviewing skills,<sup>12</sup> the reinstatement of the five-member Commission for the Prevention of Ill-treatment and Torture by police staff as an internal oversight body of the Ministry of Interior,<sup>13</sup> and the training of health-care staff in prisons on the recording of injuries as set out in the Istanbul Protocol. Further, a general refurbishment plan of police detention facilities had been initiated in 2018 (see paragraph 43).

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<sup>8</sup> Pursuant to Article 289 of the CCP the prosecutor may delegate the interrogation of criminal suspects to the police and the police in practice notifies the prosecutor of the arrest of a criminal suspect and the issuance of the decision on his/her detention.

<sup>9</sup> Pursuant to Article 288 of the CCP.

<sup>10</sup> Mainly for sobering-up purposes whenever a driver is assessed to be in a serious state of inebriation (pursuant to Article 283 of the Law on Road Traffic Security).

<sup>11</sup> The Rulebook regulates inter alia the treatment of persons detained by the police, including the application of safeguards set down in the CCP, the conditions of police detention, the use of means of coercion and custody records.

<sup>12</sup> Reference should be made to the design and delivery of a new in-service training course for police staff, entitled "Use of police powers and human rights protection of persons deprived of liberty and police officers" developed under the guidance of CoE experts. Further, by letter received on 23 June 2021, the Ministry of the Interior informed the Committee that since January 2020 a total of 1,270 police officers had attended a training course under the title: "PEACE model for conducting official interviews".

<sup>13</sup> The Commission conducts visit to police establishment in order to ensure the implementation of the Convention although its legal status remains undefined.

It is also important to reference the Action Plan adopted by the Serbian Government on the implementation of the benchmarks set out in Chapter 23 of the accession negotiations of Serbia to the European Union (EU).<sup>14</sup>

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

15. In the course of the 2021 visit, the CPT's delegation interviewed a great many persons (i.e. approximately 80) who had recently been in the custody of the police<sup>15</sup> as well as persons who were being held in police custody at the time of the visit. The majority of persons met by the delegation indicated that they had been treated correctly by police officers at the time of their arrest and while in police custody. This was notably the case for all those persons met at the Special Detention Unit for Organized Crimes at Ustanička Street in Belgrade.

However, the CPT's delegation once again received a significant number of credible and consistent allegations of physical ill-treatment of detained persons by police officers, notably in the Belgrade area. The alleged ill-treatment related to:

- the time of apprehension, after the persons had been brought under control (and handcuffed);
- the time when the suspects were being transported to the police station;
- the time when the suspects were held in an office and interviewed by police officers.

The ill-treatment was purportedly inflicted as a means to force the suspects to provide information or to confess to particular crimes,<sup>16</sup> and to a lesser extent to punish them for the alleged crime committed or for resisting arrest.

The alleged physical ill-treatment consisted primarily of slaps, punches, kicks and truncheon blows to various parts of the body, the application of electro-shocks by handheld devices and car batteries and forcing detained persons to remain in stress positions for prolonged periods. Finally, numerous remand prisoners also alleged to have received verbal insults of a racist nature notably in the light of their Albanian or Roma ethnic origin.

16. The allegations of ill-treatment inflicted by police officers were supported by both documented descriptions and photographic evidence contained in the medical files of remand prisoners. Further, the CPT's delegation was able to cross-check the allegations it received by examining the detention registers in police stations and verifying the records pertaining to any medical interventions. It was also able to follow-up on particular allegations relating to the infliction of severe ill-treatment in specified locations described by the detained persons. For example, in an office of a police inspector of the IV Anti-Narcotics Criminal Police Department of Metropolitan Belgrade Police Administration (IV Belgrade OKP), the delegation found jumpstart electrical cables and a five-litre water cannister, which lends credibility to the allegations made by detained persons that they were subjected to electro-shocks in this precise office (see paragraph 18).

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<sup>14</sup> See goals Nos. 3.1.1.1 to 3.1.1.8 and 3.1.1.24 on the necessity to implement specific training activities for police officers, renovation of police cells, reinforce the implementation of fundamental safeguards and conduct training activities on the new "Methodology on Investigation of Allegations of Ill-treatment by Law Enforcement Officials".

<sup>15</sup> I.e., persons held on remand at Belgrade District Prison and at Pančevo and Požarevac Correctional Institutions.

<sup>16</sup> Notwithstanding Article 16 of the CCP on forbidden methods of evidence.

17. The CPT wishes to highlight the following cases of alleged ill-treatment. While some of the persons met by the delegation stated that they wanted to make a complaint about the ill-treatment,<sup>17</sup> others provided information on the condition that their names would not be divulged.

- i. A young adult (AA) serving a measure of house arrest told the delegation that on 8 December 2020 his car had been stopped by police inspectors in civilian clothes. The two police officers had handcuffed him to the trunk of the police car and allegedly, after failing to apprehend a second person, had inflicted several punches, slaps and kicks to various parts of his body. Approximately 20 minutes later, after some drugs had been found in a nearby forest and while he was still handcuffed to the trunk of the vehicle, one of the police inspectors allegedly took out a handheld electro-shock device from his pocket and, in contact mode, delivered multiple charges to the detained person's mouth, cheeks, thorax and to make him confess to owning the drugs. Further, he also alleged that he had been coerced to place his head close to the exhaust pipe of the police vehicle and forced to inhale its exhaust fumes. In addition, he alleged that after being transferred to Zvezdara Police Station and placed in an office with his hands cuffed behind his back, the same two police inspectors delivered several truncheon blows to his head and legs. He also stated that he had complained to the preliminary proceedings judge about ill-treatment but the judge had reportedly replied that the matter did not concern him.

At the time of his admission to Belgrade District Prison on 10 December 2020, the following injuries were recorded in his medical file by the health-care staff which are consistent with his allegations of severe ill-treatment: *“hematoma of 4 cm on the swollen left side of the lip; swollen right ear with hematoma of 3 cm; hematoma of 4 cm right above the upper corner of the left eye; hematoma of 1 cm at the base of the nose; yellowish circular 5 cm hematoma below the left scapula; on the right forearm hematoma of 5 cm; on the right arm seven excoriations of different size from 1 to 3 cm; right hand lightly swollen; on the back side of the right thigh 20 cm tram-line hematoma of a blueish colour; on the right thigh three excoriations of 1,2,3 cm in size.”*

- ii. A person (BB) met at Belgrade District Prison stated that after being apprehended in a restaurant on 9 February 2021, two police officers had taken him to a nearby park where they allegedly subjected him to punches, slaps and kicks to various parts of the body while still handcuffed. Further, he claimed that while held in a specific office of the IV Belgrade OKP, he was struck twice with a rubber baton to his thorax by a police inspector. At the time of his admission to Belgrade District Prison on 11 February 2021, the following injuries were recorded in his medical file by health-care staff: *“light purple hematoma around the left eye, the detained person complain of pain in the thorax due to the hits received by police officers”*.

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<sup>17</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.

- iii. A person (CC) met at Belgrade District Prison, stated that following his arrest in a restaurant at the same time as the person mentioned in case ii above,<sup>18</sup> he was taken to a park where he was allegedly subjected to several punches and kicks to various parts of his body while handcuffed. Subsequently, while seated with his hands cuffed behind his back in an office of the IV Belgrade OKP, he alleged that he was punched several times by criminal inspectors in order to get him to confess to multiple offences. The minutes on detention drawn up at the time of his admission to a police cell of the same police facility bore the following entry: “*visible injuries on his face*” without any further explanation as to their origin.

Upon admission to Belgrade District Prison on 11 February 2021, the following injuries had been recorded in his medical file by prison health-care staff as originating from alleged police ill-treatment: “*blueish hematoma with swelling on the left side of the lip; circular purple hematoma of 1 cm above the left eyebrow; periorbital hematoma around the right eye 3 cm in length*”. Further, the prison medical record also mentioned the medical certificate issued on 10 February 2021 when the person had been escorted by the police to the Emergency Unit of the City of Belgrade which stated that the injuries he displayed had been sustained during a boxing training session a couple of days earlier.<sup>19</sup>

- iv. A 15-year-old boy (DD) on remand met by the delegation at Belgrade District Prison alleged that at the time of his arrest on 26 January 2021 by two plain clothes police officers, he had been slapped and punched several times on his face, back of the head, torso and genitals. Further, he stated that one police officer had put his hands around the boy’s neck in a strangling attempt for the purpose of obtaining information about his apparent criminal offence. Subsequently, upon his transfer to an office of the IV Belgrade OKP, he alleged that he had received several kicks to his ribs, was thrown on the floor, slapped on his face while sitting on a chair and in a standing position after being coerced to remove his clothes. The alleged ill-treatment had continued until the arrival of his father at the police establishment. At the time of his admission to Belgrade District Prison, on 28 January 2021, the following injuries were recorded and photographed in his medical file and were assessed by health-care staff as being linked to police ill-treatment: “*under the left eye 8 cm hematoma with swelling; under the right eye 3 cm hematoma with swelling; on the lower lip 1 cm hematoma and cut of 0,5 cm; on the right side of the neck three hematomas of 1,2,3 cm respectively; on the back side of the left ear hematoma of 1 cm; on the right shoulder three hematomas of 1 cm each; on the upper part of the left pectoral muscle yellowish hematoma of 2 cm; on the inner part of the right leg hematoma of 5 cm*”.
- v. A remand prisoner (EE) met by the delegation at Belgrade District Prison alleged that he was punched and kicked several times by police officers after being immobilized and while lying on the ground at the time of his arrest on 23 January 2021 in Belgrade,<sup>20</sup> after he attempted to escape following to a shooting incident in a Belgrade park. At the time of his admission to Belgrade District Prison on 25 January 2021 the following injuries were recorded in his medical file as well as photographed in relation to possible police ill-treatment: “*7 cm hematoma in the area between the right temple and right eyelid; in the area of the right cheekbone hematoma of 3 cm in length; on the left side of the chin excoriation of 3,5 cm; in the area of the left clavícula 4 cm hematoma.*”

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<sup>18</sup> This person was interviewed separately from the person in case No. (ii in paragraph 17.

<sup>19</sup> The detained person had told the CPT’s delegation that the police inspectors had instructed him to tell the doctors at the emergency unit that he had sustained the injuries during a sporting activity.

<sup>20</sup> The remand prisoner in question had turned 18 years old on 9 February 2021.



- vi. A remand prisoner (FF) met by the delegation at Belgrade District Prison alleged that at the time of his arrest on 7 March 2021 he had been punched in the face and received several kicks to various parts of his body by a group of *Gendarmerie* officers after having been violently thrown on the ground. Subsequently, he was transferred to Savski Venac Police Station where he was allegedly seated on a chair in an inspector's office with his hands tightly handcuffed. A team of emergency medics were called who, in the presence of police officers, provided him with painkillers and recorded in the medical certificate the following entry: "*scratches on his body and on the right side of the torso*". At the time of his admission on 9 March 2021 the following injuries were recorded in his medical file as well as photographed and qualified as originating from possible police ill-treatment: "*on the right cheek excoriation of 1 cm, on the right ear purple circular hematoma of 1 cm; on the right hip oval excoriation covered in crust 3 cm x 1,5 cm; on the upper side of the thorax two excoriations covered in crust of 0,5 and 1 cm each*".
- vii. A remand prisoner (GG) met at Belgrade District Prison stated that he was stopped on the street in Belgrade on 21 February 2021 by a police officer, while another officer arrived and punched him in the face and threw him violently to the ground face-down. After being handcuffed, one of the officers stamped his boot against his back while the other one stood on his face. Following his transfer to Savski Venac Police Station in a police vehicle, he alleged that he was verbally insulted and kicked in the back before entering the station. As he complained about the ill-treatment to the duty officer, he was referred to a medical examination at the Military Medical Academy where, in the presence of the escorting police officers, a doctor recorded in the medical certificate the following entry: "*superficial injury on the head*". At the time of his admission to Belgrade District Prison, on 22 February 2021, the following injuries were recorded in his medical file as well as photographed: "*linear hematomas in the area of the right eyelid 3 cm x 0,1 cm and two crusts of 2 cm each on the left thigh*".
- viii. A remand prisoner (HH) met at Belgrade District Prison alleged that at the time of his apprehension near the Medak Park in Belgrade on 11 February 2021, he had been punched and kicked in his head and thorax by two police officers in civilian clothes because they wanted information about the location of some drugs. Subsequently, following his transfer to Zvezdara Police Station, he was interrogated in an inspector's office while handcuffed in a stress position. At the time of his admission to Belgrade District Prison, the following injuries were recorded in his medical file as the result of the alleged police ill-treatment: "*around the right eye pale yellowish and greenish hematoma*".

18. The CPT's delegation once again received several allegations of severe physical ill-treatment inflicted against criminal suspects in the course of long interrogation sessions in inspectors' offices for the purpose of extracting a confession or obtaining information. Such alleged treatment could amount to torture. For example:

- i. A person (II) met at Belgrade District Prison stated that on 5 March 2021, he was apprehended and transferred to the 29<sup>th</sup> November Belgrade Metropolitan Police Station. He alleged that, while still handcuffed in an office of the IV Anti-Narcotics Criminal Police Department, an inspector had blindfolded him and poured water over his head from a plastic cannister and, using a car battery and jumpstart cable, had inflicted multiple electric shocks to his thorax, legs and genitals purportedly to obtain information relating to his suspected offence;

- ii. another person (JJ) met at Belgrade District Prison and interviewed separately from JJ stated that on 4 March 2021 he was brought from home to the 29<sup>th</sup> November Belgrade Metropolitan Police Station and, as he described, placed in the same office as mentioned in case i) above. He alleged that he was hand and ankle-cuffed, blindfolded and that an inspector, using a car battery and jumpstart cable, had inflicted several electric shocks to his tongue until he agreed to sign a dictated statement;
- iii. a person (KK) met at the remand section of Požarevac Correctional Institution stated that on 17 August 2020 he was apprehended and taken to an office on the premises of Požarevac Police Administration. He alleged that while seated on a chair with his hands cuffed behind his back, he had been subjected to multiple blows to his thorax with a plastic bottle filled with water and a telephone directory by three police inspectors. Subsequently, he was apparently forced to stand-up and bend over in a 90-degree forward flexion with a sandbag placed on his back and his hands cuffed around one leg for two hours, purportedly to obtain information pertaining to another case.

19. As it has been the case during previous visits, several persons told the delegation that they had complained about the alleged ill-treatment by police officers to the prosecutor or to the judge on preliminary proceedings. Reportedly, once again, the reaction of both prosecutors and judges was to dismiss or ignore such allegations even when the persons concerned bore visible injuries.

**The CPT reiterates its recommendation that, whenever criminal suspects brought before a prosecutor or judge allege ill-treatment by law enforcement officials, the prosecutor/judge record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the prosecutor/judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment (see also paragraph 42).**

20. In sum, the CPT acknowledges the efforts invested by the Serbian 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 periodic visit demonstrate clearly that ill-treatment by the police remains a serious problem, which requires the Serbian authorities to take more resolute action.

First and foremost, in the CPT's view it is incumbent on the Serbian authorities to clarify that the responsibility for the eradication of ill-treatment lies with the senior management of the Ministry of the Interior and the Police Directorate. The Serbian 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 State authorities 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 and verbal assault.

- Further, the Sremska Kamenica Police Academy should develop 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 Serbian situation and of each of its 27 police administrations (e.g. in terms of promoting a shift from confession-based interview and investigation methods, exercise of means of coercion at the time of the arrest in rural and urban areas of the country and the vision on police ill-treatment by the police senior management).
- In contexts where criminal investigations are often 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 application of investigative interviewing techniques by police inspectors, which had been developed by several police services in Europe and advocated by eminent legal experts in the field of torture prevention,<sup>21</sup> enhance information flows and communication and reduce the risk of human error and false accusations. In the Committee’s view, specific training on professional interviewing techniques should be developed and regularly provided to police operational officers and investigators. In particular, it should be provided to those investigators involved in anti-narcotics operations such as the IV Belgrade OKP who, as illustrated above, appear to be more inclined to inflict physical and psychological ill-treatment for the purposes of trying to obtain information from detained persons. 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 40).
- Standard Operating Procedures (SOPs) on the treatment of detained persons should be developed and 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 SOPs should be based on the existing legal framework such as the Rulebook on Police Powers (RPP) 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 custody officer, 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>21</sup> See in this respect the [“Principles on Effective Interviewing for Investigations and Information Gathering”](#) recently adopted as a guideline by a group of eminent international legal experts in the field of torture prevention and already endorsed by several United Nations bodies and known as “Mendez Principles”.

- The Committee notes that having designated police staff who exclusively fulfil the task of “custody officer” (as distinct from an officer merely posted in the detention area), who is accountable for the well-being of detained persons during their time spent in police custody, can play an important role in preventing ill-treatment by the police. In its 28<sup>th</sup> General Report the CPT stressed<sup>22</sup> that introducing designated custody officers could also strengthen the practical implementation of various procedural and other safeguards against ill-treatment. In principle, all arrested persons should be brought directly to the custody cell area of a police station and not to the offices of crime inspectors, where he or she would be registered and informed of their rights, whether they wished to exercise them, etc. and placed in a detention cell. Thereafter, the person could be taken to an interview room for questioning by the crime inspectors or other competent officers and returned to the detention cell once the interview was completed. This would facilitate the maintenance of a comprehensive custody record and better protect the integrity of the procedure as well as the rights of the individual.
- Combating ill-treatment entails the timely transmission of information on allegations of ill-treatment to the competent judicial and prosecutorial authorities (see paragraph 86). 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.

**21. The CPT calls upon the Serbian authorities and in particular the Ministry of the Interior and Police Directorate to adopt a Strategy on the Eradication of Police Ill-treatment taking due account of the detailed remarks set out in paragraph 20 above.**

**Further, the Committee recommends that the existing police oversight mechanisms conduct a systematic and urgent assessment of the modus operandi and treatment of detained persons by the IV Anti-Narcotic Criminal Police Department of 29<sup>th</sup> November Metropolitan Belgrade Police Station (IV Belgrade OKP).**

**The Committee also recommends that prosecutorial and relevant judicial authorities when confronted with direct allegations from detained persons in the context of criminal proceedings about physical ill-treatment by police officials should take immediate actions to clarify those fact which might relate to criminal offences ex officio prosecutable under Articles 136 (extortion of confession) and 137 (ill-treatment and torture) of the Criminal Code as well as foreseen by Point 5 of the Methodology for the Conduct of Investigations into Allegations of Torture and Ill-treatment by the Police (Methodology).**

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<sup>22</sup> See paragraph 85 of the 28<sup>th</sup> Annual Report of the CPT’s Activities CPT/Inf (2019) 9.

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

22. 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. For this reason, the CPT has examined this matter carefully during its 2017 visit to Serbia.<sup>23</sup> In its report on the 2017 visit, the CPT made several recommendations to improve the effectiveness<sup>24</sup> of the investigations into allegations of ill-treatment by prosecutorial authorities and the functioning of an independent internal police control accountability system.

23. The action taken by the Serbian authorities in response to the CPT's recommendations on its report on the 2017 ad hoc visit include:

- amendments to the Criminal Code in 2019, whereby the maximum sanction for the criminal offence of ill-treatment and torture under Article 137 of the Criminal Code was increased to “two to ten years imprisonment”, equivalent to the penalty for the crime of extorting a confession under Article 136 of the Criminal Code;<sup>25</sup>
- The Methodology for the Conduct of Investigations into Allegations of Torture and Ill-treatment by the Police (Methodology) was adopted as a mandatory instruction by the Republic Public Prosecutor as well as the Ministry of Interior. In the course of 2018 and 2019, a total of 82 prosecutors and 85 police officers had been trained on the practical implementation of the methodology. The Methodology provides 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.<sup>26</sup>
- The adoption of a new Rulebook on Complaints within the Ministry of Interior pursuant to Article 235 of the Law on Police which was not in force at the time of the 2017 CPT's visit. According to the Rulebook complaints of police misconduct lodged with the Ministry are processed by the relevant head of the organisational unit in which the police officer, who is the object of the complaint, is located. Persons may appeal<sup>27</sup> the decision to a three-member territorial commission appointed by the Minister of the Interior.<sup>28</sup> Complaints containing elements of criminal responsibility by police officials must be immediately forwarded to the competent prosecutor, the Minister and the Sector of the Internal Control of the Police of the Ministry of Interior (SUKP).<sup>29</sup>

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<sup>23</sup> See paragraphs 18-32 of the CPT's report on its 2017 ad hoc visit to Serbia CPT/Inf (2018) 21.

<sup>24</sup> Relevant criteria used include independence and impartiality, thoroughness, promptness, victim involvement and public scrutiny.

<sup>25</sup> In respect of the most serious qualification of the crimes in question pursuant to Articles 136, paragraph 2 and 137, paragraph 3, of the Criminal Code.

<sup>26</sup> The Methodology invites *inter alia* prosecutors to conduct thorough investigations into allegations of ill-treatment and torture despite the fact that in the light of Article 495 of the CCP, prosecutors are entitled to apply summary proceedings in respect of cases of alleged violations of Article 136, paragraph 2, and 137, paragraph 3 of the Criminal Code given the relatively mild incarceration terms foreseen in the legislation.

<sup>27</sup> See Article 235, paragraph 4 of the Law on Police.

<sup>28</sup> It is composed of a police officer (acting as President), an official of the Ministry of Interior and a representative of civil society. Commissions operate at the level of each police district and a central one in Belgrade.

<sup>29</sup> See Article 234 of the Law on Police.

24. The legal framework covering the spectre of possible criminal offences related to torture and physical ill-treatment (i.e. Article 136 on coerced confession and Article 137 on ill-treatment and torture of the Criminal Code) still retains well-known legal flaws which the Serbian authorities have been called upon to redress.<sup>30</sup> For example, the formulation of Article 137 still contemplates that torture could be perpetrated by any person and its commission by a public official or a person performing an official capacity is considered as an aggravating factor. Further, the formulation of Articles 136 and 137 remains overlapping and poses problems of qualification to prosecutorial and judicial authorities in cases of coerced confessions. In addition, Articles 136 and 137 of the Criminal Code do not contemplate qualified formulations of the various possible forms of physical ill-treatment and torture of detained persons (such as e.g. grave health consequences or death of a victim, or certain characteristics of the victim in terms of young age, pregnancy etc.).

The CPT also recalls that under international customary law the crime of torture should not be subject to a statute of limitations and the definition of torture should be in line with Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>31</sup>

**The CPT recommends that Articles 136 and 137 of the Criminal Code be amended in light of the above remarks.**

25. At the outset of the 2021 periodic visit, the CPT's delegation received information from the Republican Public Prosecutor and Ministry of Justice that, between 2017 and 2020, criminal reports had been received by prosecutors for alleged violations of Articles 136 and 137 of the Criminal Code in respect of 900 law enforcement officials (i.e. 866 police officers and 34 prison custodial staff) which had resulted in indictments against 29 officials (i.e. 28 police officers and one custodial staff). Criminal reports conversely had been rejected in respect of 764 law enforcement officials (738 police officers and 28 prison custodial staff) mainly due to the lack of grounds related to the alleged criminal offence (577 police officers and 22 prison custodial staff).<sup>32</sup> First instance verdicts had been passed in respect of 18 police officers, of whom three were acquitted, 12 were given conditional sentences, one was sentenced to a term of imprisonment, one a pecuniary fine and in one case the punishment was remitted.<sup>33</sup>

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<sup>30</sup> See in this respect paragraph 37 of the Third periodic report submitted by Serbia to the United Nations Committee Against Torture CAT/C/SRB/3.

<sup>31</sup> See in particular paragraph 8 of the UNCAT Concluding observations on the second periodic report of Serbia CAT/C/SRB/CO/2 which reads as follows: "*The Committee urges the State party to promptly implement the legislative measures necessary to harmonize the provisions of the Criminal Code dealing with torture and align them with the definition contained in article 1 of the Convention, by, among other things, including acts of torture perpetrated by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The State party should ensure that acts of torture are punishable by appropriate penalties commensurate with their grave nature, in accordance with article 4 (2) of the Convention. The Committee urges the State party to repeal the statute of limitations for the crime of torture and to take the action necessary to reinstate those investigations for acts of torture that have been discontinued owing to the statute of limitations.*".

<sup>32</sup> In respect of the rest of the cases the investigation was either deferred in the light of Article 283 of the CCP or dismissed due to the operation of the statute of limitations pursuant to Article 284, paragraph 1, point 2 of the CCP or the lack of ground that the criminal offence constitutes a crime prosecutable ex officio (i.e. Article 284, paragraph 1, point 3 of the CCP).

<sup>33</sup> Pursuant to Article 98, paragraph 2, point 1 of the Criminal Code.

Further, the CPT's delegation was informed at the outset of the visit that the Sector of Internal Control of the Ministry of Interior (SUKP) had in the same timeframe investigated a total of 449 cases of alleged police ill-treatment and torture upon request of the prosecutorial authorities.<sup>34</sup>

26. As to the effectiveness of prosecutorial investigations into allegations of ill-treatment, the CPT's delegation examined a total of 147 prosecutorial investigative files collected by the Belgrade Centre for Human Rights concerning investigations carried out by prosecutors between 2017 and 2020 in relation to criminal reports received regarding violations of Articles 136 and/or 137 of the Criminal Code by law enforcement officials. The examination revealed that in some cases prosecutors were correctly implementing the Methodology by reacting promptly to the notification of the allegation or criminal report, conducting some of the investigative actions autonomously, securing evidence (i.e. ordering forensic medical examinations of injured parties and collecting relevant CCTV recordings) and conducting confidential interviews of witnesses as well as the alleged victims of ill-treatment. Further, in one case the Belgrade Higher Prosecutor had endorsed in 2019 the request of the transfer of competence lodged by the Obrenovac Basic Prosecutor in the light of a possible conflict of interest in investigating the alleged misconduct of a police officer with whom the prosecutor had co-operated in the past.<sup>35</sup> This is positive and in line with the spirit and letter of the Methodology.

27. However, in the CPT's view there were still numerous instances in which prosecutorial investigations appeared to fail to comply with the criteria of effectiveness. For example, it still took months for prosecutors to start collecting evidence and the necessary investigative actions (such as interviews of the main parties) were almost systematically delegated to the SUKP and in some cases other police units.<sup>36</sup> Further, in too many instances the thoroughness of the investigation was deficient such as a failure to order forensic examinations to assess the compatibility of the injuries of victims with their allegations or to secure important evidence such as CCTV recordings, witness statements and interviewing the victim. Consequently, several decisions on the dismissal of criminal reports were simply based on an examination of the police custody registers and reports on the use of means of coercion drawn up by the very same police officers who allegedly committed the ill-treatment without the statement of the alleged victim. Important medical evidence such as the injuries recorded by prison health-care staff upon the complainant's admission to prison was ignored. The lack of thoroughness was often linked to the fact that the necessary criterion of independence was lacking in too many cases where prosecutors had delegated all investigative actions to the same operational units of the police to which the alleged perpetrators of the ill-treatment belonged. The following cases illustrate the above-mentioned deficiencies in the investigations:

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<sup>34</sup> No information was received on the number of complaints filed by citizens to the Ministry of Interior pursuant to Article 235 of the Law on Police.

<sup>35</sup> The investigation had been entrusted to Lazarevac Basic Prosecutor pursuant to Article 20 of the Law on Public Prosecution.

<sup>36</sup> Points 3 and 4 of the Methodology provides that certain investigative actions can be delegated to the SUKP provided that the prosecutor and members of SUKP ensure the necessary formal and factual independence from the law enforcement officers who are object of the complaint. That said, investigative actions should not be entrusted to other organizational units of the police.

- A foreign national (LL) at the time of his admission to Belgrade District Prison on 26 February 2020 alleged to have received several kicks and punches at the time of his arrest by police officers of Zvezdara Police Station; injuries had been recorded in his medical file by the prison doctor.<sup>37</sup> The Director of Belgrade District Prison had transmitted the relevant information (i.e. medical report) to the 2<sup>nd</sup> Belgrade Prosecutor on 3<sup>rd</sup> March 2020 for further investigation (see paragraph 86). By letter received on 3<sup>rd</sup> June 2021 the Serbian authorities informed the Committee that the 2<sup>nd</sup> Belgrade Basic Prosecutor had transmitted the above-mentioned information to the competent 1<sup>st</sup> Basic Prosecutor on the 21 September 2020 (i.e. almost seven months after being notified) who tasked the SUKP to collect information from the relevant interlocutors on 27 October 2020. By a report dated 29 December 2020 the SUKP informed the competent prosecutor that based on the interviews of witnesses of the arrest and police officers who had executed it, no excessive force was used at the time of the arrest and that the detained persons already showed swelling on his forehead prior to the enforcement of police powers. The investigation is still pending as the 1<sup>st</sup> Belgrade Basic Prosecutor has requested CCTV footage from a nearby bakery in order to obtain more conclusive information.
- In relation to the case of AA described in paragraph 17i), the Director of the Belgrade District Prison had transmitted the relevant information (i.e. medical report drawn up upon admission and allegations) to the 2<sup>nd</sup> Belgrade Basic Prosecutor on 30 December 2020. Concurrently, the mother of the injured party had also filed a criminal report against unidentified police officers of Zvezdara Police Station on 28 December 2020. Acting upon this notice of crime, the prosecutor tasked on 21 January 2020 the SUKP to collect the relevant information on the allegations. By report sent on 22 February 2021, the SUKP informed the prosecutor that it had interviewed the mother of the injured party, his brother but not the alleged victim.<sup>38</sup> Further, based on the relevant documentation examined at Zvezdara Police Station, it appeared that the detained person showed no injuries at the time of his admission to the detention area. Further, the injured party had only alleged ill-treatment at the time of his admission to Belgrade District Prison. The investigation was still pending at the time of the adoption of the report as the prosecutor had requested access to the CCTV recordings of the premises of the Belgrade Higher Court.

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<sup>37</sup> The injuries consisted of the following: *“Skin tear of 3 cm x 2 cm of irregular shape on the area of the right forehead, periorbital hematoma, several point shaped hematomas in the central part of the forehead, swelling of the nasal pyramid with a crust of 0,5 cm on its left side; on the area between the left shoulder and left scapula large purplish hematoma of 10 cm x 5 cm; in the area of the right scapula purplish to greenish hematoma of 8 cm x 4 cm, on the upper part of the right forearm hematoma of 6 cm x 4 cm in size; on the right knee circular crust of 1 cm.”*

<sup>38</sup> The reason adduced was that the injured party was serving a measure of house arrest at the time of the SUKP’s investigation.



- A person (MM) arrested in Leksovac on 16 July 2018, filed a criminal report on 25 July 2018 to the Leskovac Basic Prosecutor. He alleged that at the time of his arrest two police officers after extracting him by force from his van, had handcuffed him and allegedly punched and kicked on various parts of the body and threatened to throw him from a nearby bridge. Subsequently, after being transferred to Leskovac Police Station, he was allegedly punched and slapped on his face while sitting on a chair with the hands cuffed behind his back and forced to sign confessions to multiple misdemeanour offences. After his release on the same day, he received medication and obtained a medical certificate recording his injuries from the Niš City Emergency Department. The Leskovac Basic Prosecutor issued a decision on the rejection of the criminal report on 28 October 2018 as ungrounded solely in the light of the minutes and documentation received from the Leskovac Police Station certifying the legality of the resort to means of coercion and denying the use of force towards the injured party. Further, the prosecutor autonomously interpreted the medical documentation provided by the victim without ordering a forensic expertise concluding that the *described* injuries in the attached medical documentation consisting of swelling on the face of the injured party were not compatible with the alleged physical ill-treatment “*due to the absence of variation of colours on his skin.*” The appeal filed to the Leskovac Higher Prosecutor against the decision on the rejection of the criminal report was rejected as ungrounded without further reasoning.
- One citizen (NN) alleged physical ill-treatment at the time of his arrest (together with three other persons) on 28 June 2018 on the Zagreb-Belgrade highway by a police patrol of officers in civilian clothes who had placed their boots on his head after extracting him from the car. They had allegedly inflicted several kicks to his ribs and legs. Subsequently, after his transfer to an office of 29<sup>th</sup> November Belgrade Metropolitan Police, the same police inspectors poured water on the complainant and threatened to apply electric shocks to his body for the purpose of obtaining information. The competent prosecutor was informed of the allegations through SUKP on 5<sup>th</sup> July 2018 following a complaint filed by the alleged victim. On 23 September 2019 (i.e. almost 15 months after), the 3<sup>rd</sup> Basic Belgrade Prosecutor issued a decision rejecting the case as ungrounded in the light of the information it had received from the Complaint Commission of the Belgrade Police Administration and the testimonies of the two police inspectors who denied the allegations and confirmed that there had been no use of force at the time of the arrest of the complainant. The prosecutor did not take into consideration the relevant medical documentation from the Belgrade City Emergency Department recording the injuries displayed by the detained person nor did he interview the alleged victims about the facts. An appeal filed to the Belgrade Higher Prosecutor on 19 October 2019 by the complainant against the above-mentioned decision was rejected by Belgrade Higher Prosecutor on 18 November 2019 as ungrounded without any further reasoning.

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

- **prosecutors investigating cases of alleged torture and ill-treatment should always in practice conduct investigative actions themselves, especially as regards interviews of relevant witnesses, injured parties and police officers; in such cases, they should also always order a forensic medical examination; further, such an approach should be applied regardless of whether the shortened procedure applies or not;**

- **prosecutorial investigations into cases under Articles 136 and 137 of the Criminal Code are conducted in a comprehensive manner, i.e. by ensuring that significant episodes and surrounding circumstances indicative of ill-treatment are not disregarded;**
- **investigations are carried out in a prompt and reasonably expeditious manner.**

**Further, the CPT would like to be informed of what action is being taken to ensure that all prosecutors are both properly trained on and applying the mandatory instruction on the Methodology on the Investigation of Cases of Ill-treatment.**

29. As mentioned in paragraph 27, the SUKP was generally entrusted with the investigative actions on behalf of the relevant prosecutors. At the time of the 2021 visit, the SUKP was staffed with 145 police officers (i.e. 60 more than in the 2017), 16 of whom had undergone training on the Methodology. Further, the SUKP had enhanced its capacity to conduct field visits and more sophisticated investigative actions, and a new Rulebook on its functioning was adopted in 2018 which foresees the possibility for SUKP inspectors to collect information on possible police misconduct directly rather than through the relevant supervisor of the police officer subject of a complaint or allegation.<sup>39</sup> The examination of the work of the SUKP through the prism of the reports provided to the competent prosecutor upon their request reveals that officials were investing efforts in order to comply with the Methodology in terms of promptness of the investigative actions and thoroughness by interviewing a more diversified spectre of actors than in the past. That said, the CPT found again examples of lack of impartial investigations, inconsistencies in securing evidence and a failure to order forensic examination.

In the CPT's view, an independent authority responsible for the investigation of complaints against the police can make a significant contribution to preventing ill-treatment, provided it is genuinely independent and adequately resourced to conduct effective investigations. Ideally, the CPT would wish the Serbian authorities to establish such an independent police complaints body. However, the CPT recognises that this is a longer-term objective and considers that in the shorter term the Serbian authorities should take action to reinforce the capabilities of the SUKP.

**The CPT recommends that the SUKP comply with all aspects of the Methodology on the Investigation of Cases of Ill-treatment.**

30. In the course of the 2021 visit, the CPT's delegation also examined a number of final decisions issued by the courts in respect of cases of violations of Articles 136 and 137 of the Criminal Code by law enforcement officials. As mentioned in paragraph 25, a total of 15 guilty verdicts had been delivered between 2017 and 2020. The leniency of some of the sentences imposed remains a concern. In addition, police officers convicted under Articles 136 and 137 Criminal Code continued to work for the police.<sup>40</sup> For example:

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<sup>39</sup> See Article 8 of the Rulebook on the Manner of Execution of International Control of the Ministry of Interior. Although Article 131 of the Law on Public Officials demands the automatic termination of service for those sentenced to more than six months of imprisonment (including conditional sentences), Article 172, paragraph 2 of the Law on Police does not include criminal offences under Articles 136 and 137 among those requiring an automatic termination of service. Therefore, this could only be the result of a disciplinary process.

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- A police officer from Arandjelovac Police Station was sentenced on 26 March 2019 by Arandjelovac Basic Court to a conditional sentence of one year of imprisonment with a grace period of three years under Article 137, paragraph 3, of the Criminal Code for having inflicted serious physical ill-treatment. The officer had inflicted blows with a truncheon to the soles of the feet (i.e. a well-known torture method called *falaka*) of two criminal suspects on 4 January 2016 in his office for the purpose of coercing them to confess to a case of theft. The police officer in question is still working at the same police establishment.
- A police officer from Zemun Police Station in Belgrade was sentenced on 4 June 2019 by the 3<sup>rd</sup> Belgrade Basic Court to a conditional sentence of ten months of imprisonment over a grace period of three years under Article 137, paragraph 3 of the Criminal Code for having punched and kicked a detained person in the police station. The police officer in question had consistently denied the charges even after being confronted with the CCTV recording of the incident.

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

Of course, judicial authorities are independent, and hence free to set, within the parameters set by law, the sentence in any given case. However, the CPT wishes to emphasise that, in the interest of prevention of ill-treatment, the criminal justice system should demonstrate, through appropriate repressive measures, a firm attitude with regard to torture and other forms of ill-treatment.

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

**Further, the Committee recommends that criminal offences under Articles 136 and 137 of the Criminal Code should be included in Article 172 of the Law on Police as leading to an automatic termination of service in cases where the officer is found guilty by a court.**

32. The CPT's delegation also examined the developments of judicial cases of alleged torture and physical ill-treatment which had been mentioned in its previous reports. For example, as mentioned in the CPT's report on the 2017 ad hoc visit,<sup>41</sup> a Constitutional Court decision of July 2013 had established the violation of physical and mental integrity of the complainant Mališa Jevtović due to the negligence of the judicial authorities to ensure a prompt, thorough, independent investigation into the episodes of physical ill-treatment inflicted by custodial staff at Pavilion VII of Požarevac Correctional Institution on 24 December 2011. In December 2019, the ECtHR had issued a decision against Serbia establishing the substantial<sup>42</sup> as well as procedural violation of Article 3 of the

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<sup>41</sup> See CPT/Inf (2018) 21, paragraph 32 of the CPT's report on the 2017 ad hoc visit to Serbia and in particular the request for information on the investigative steps taken in order to comply with the Constitutional Court decision.

<sup>42</sup> In the light of physical ill-treatment both in remand detention at Belgrade District Prison and imprisonment at Požarevac Penal Correctional Institution.

European Convention on Human Rights. Further, the ECtHR has issued two recent decisions against Serbia in which a violation of the procedural limb of Article 3 of the European Convention on Human Rights was found. Both decisions relied on previous findings of the CPT in the context of its visits to Serbia.<sup>43</sup>

33. The CPT's delegation was also informed that in relation to the street protests of July 2020 staged in different cities in the context of the enforcement of the measures in the fight against the Covid-19 pandemic, at least 28 complaints had been filed with the competent prosecutors and the Ministry of Interior alleging physical ill-treatment by police officers either at the time of the containment of the protests or during their apprehension and detention for a misdemeanour offence. **The CPT's would like to receive an update on the status of the disciplinary and prosecutorial investigations in relation to the above-mentioned cases.**

#### 4. Safeguards against ill-treatment

##### a. introduction

34. As mentioned in paragraph 20, it appeared that SOPs to guide the police officer in dealing with persons in custody throughout the whole chain of detention were under consideration. Further, the Serbian authorities were also contemplating the introduction of the "custody officer" model for managing persons deprived of their liberty by the police. These efforts remained at an embryonic phase at the time of the 2021 periodic visit.<sup>44</sup>

##### b. notification of custody

35. The right of a detained person to inform a family member or other person of their choice without delay about his/her arrest is set down in Article 69, paragraph 3, of the CCP. In the course of the visit, many of the persons who had been arrested in the larger urban areas outside of their homes claimed that the police had facilitated the contact of a member of their family during the initial stages of detention. That said, in several cases criminal suspects told the CPT's delegation that police officers had denied or delayed their request to inform a third party until after the issuance of the decision on detention. Further, the custody records examined by the CPT's delegation showed that the relevant minutes on detention contained no mention of the modality and timing of when a relative or third party had been contacted nor mention of any feedback delivered to the detained person.

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<sup>43</sup> In the decision in the case of [Zličić vs. Serbia](#) of 26 January 2021 which concerned the applicant's alleged ill-treatment by the police in Novi Sad in 2014, the ECtHR found inter alia a violation of Article 3 because of the absence of an adequate investigation by the prosecutorial authorities into the allegations of ill-treatment (in the light of the outright rejection to start an investigation even in the presence of clear medical evidence on the nature of the injuries allegedly inflicted on Mr Zličić).

<sup>44</sup> Article 30 of the Rulebook on Police Powers states that the head of the relevant organizational unit of the police is responsible for the exercise of police powers in respect to detained persons.

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

c. access to a lawyer

36. Pursuant to Articles 68 and 69 of the CCP, the criminal suspect has the right to a defence counsel of his/her own choice, to have a confidential conversation with the same (only visually supervised) and to have the defence counsel present during each interview by the police.<sup>45</sup> As to the exact time when the right of access to a lawyer becomes effective, the police are under an obligation to provide effective access to a legal counsel to persons deprived of their liberty at the time of the issuance of the decision of provisional detention (i.e. within two hours from the time the suspect is informed that he/she would be kept in custody).<sup>46</sup> The CCP also foresees that a criminal suspect be assisted by a lawyer at the time of the serving of the decision on detention and if the detained persons does not secure the presence of lawyer of his/her choice within four hours, the competent prosecutor will appoint an ex-officio one (within a maximum period of 24 hours).<sup>47</sup>

The findings from the 2021 visit show that the legal framework providing for access to a lawyer as currently applied does not act as a safeguard against ill-treatment. Many persons stated that they only saw their lawyers after delivering a statement to police inspectors, at the time of the signing of the decision on detention. Detained persons alleged in some cases that their lawyers had been physically prevented from accessing the inspectors' offices and kept waiting in the hall of the police station. Further, the great majority of persons met stated that they did not have the possibility to hold a confidential conversation with their lawyers prior to meeting the prosecutor (pursuant to Article 68 of the CCP) or prior to the confirmation hearing in front of the judge of preliminary proceedings. Consequently, it is not surprising that the custody registers and personal files examined by the delegation showed no sign of the chain of events relating to access to a lawyer such as the request to see a lawyer, the contacting of a lawyer, the attendance of the lawyer at the police station, all of which is clearly laid down in law.<sup>48</sup>

Therefore, the Serbian authorities need to invest further efforts to ensure that detained persons are able, in practice, to meet with a lawyer as from the very outset of detention, without any undue delay.

**The CPT calls upon the Serbian authorities to take steps to ensure that the right of access to a lawyer applies effectively as from the very outset of the deprivation of liberty by the police. Further, the time at which police officers had contacted the ex officio (or a private lawyer), and 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.**

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<sup>45</sup> The law enforcement authorities are also under an obligation to provide an *ex officio* lawyer from the list submitted by the relevant Bar Association.

<sup>46</sup> Pursuant to Article 294 paragraph 2 of the CCP.

<sup>47</sup> Pursuant to Article 294, paragraph 4 of the CCP.

<sup>48</sup> The only trace of the presence of the lawyer was to be found in the decision on detention in which a stamp and a signature were placed by the appointed legal counsel.

d. access to a doctor

37. The legal framework regulating the right of detained persons to access to a doctor remains the same as in previous visits: persons in police custody may, pursuant to Article 69, paragraph 4 of the CCP request to be examined by a doctor of their choice or appointed by the prosecutor or the court. Further, Article 33 of the RPP tasks the police staff in detention areas to check visually the presence of visible injuries on detained persons, enquire about their state of health and facilitate the provision of medical assistance and ensure the continuation of therapeutic actions.

In practice, the findings of the CPT's delegation indicate that detained persons generally received medical assistance in the form of the intervention of an ambulance or escorting to a nearby emergency unit and there were no obstacles to the continuation of their therapeutic interventions.

That said, the minutes on the detention of persons in police custody examined at the police establishments visited confirmed that police officers were systematically present during medical examinations of detained persons (contrary to the provision of Article 36, paragraph 3 of the RPP).<sup>49</sup> In respect of several criminal suspects in police custody who clearly displayed visible injuries (subsequently photographed in prison) the relevant minutes on detention drawn up by the custody officer recorded that no injuries were visible at the time of their admission in a police detention area. In addition, several remand prisoners who alleged physical ill-treatment told the delegation that before being transferred to the police detention area they had been instructed by police inspectors what to say in case health-care staff from an emergency unit would enquire about their visible injuries.<sup>50</sup>

The CPT must stress once again that all medical examinations should be based on the principle of confidentiality and be conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of police staff. The presence of police staff during medical examinations of detained persons could discourage a detained person who has been ill-treated from saying so and, more generally, is detrimental to the establishment of a proper doctor-patient relationship; alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. Further, police officers in charge of the compilation of the minutes on the detention of person should apply the utmost diligence in recording any possible injury displayed by detained persons at the time of their admission to a detention cell as well as to ensure that they are promptly visited by a doctor in a confidential setting.

**The CPT recommends that the Serbian authorities ensure that the principle of medical confidentiality is strictly respected and that police officers accurately record visible injuries in the relevant minutes in the light of the above remarks (see also paragraph 85). In particular, the remarks made by the Committee in paragraph 20 concerning the importance of the role played by the custody officer in the prevention of ill-treatment are also relevant in this context.**

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<sup>49</sup> Article 36, paragraph 3 of the RPP reads as follows: “Police officers, only at the request of medical staff, for reasons of security of medical staff, may be present during the medical examination of the detained person and this presence shall be only by officers of the same sex as the person being examined”.

<sup>50</sup> For example, detained persons had been instructed to state that the injuries in question were the result of an accidental fall prior to the arrest or sport training.

e. information on rights

38. The provisions of the CCP regulating the information on rights (Article 69 of the CCP) which provide that detained persons read, be explained and sign an information sheet at the time of attending a police station were generally respected in practice. The relevant information sheets were signed quite promptly upon the attending of criminal suspects to the relevant police station and existed in five different languages. That said, some detained persons alleged that they had not been provided with a copy of the information sheet (contrary to Article 30 of the RPP). Further, there appeared to be two different versions of the same sheet in use at the police stations visited, one of which did not contain the right of notification to a third party and the right of access to a doctor.

**The CPT recommends the Serbian authorities to take steps to ensure without further delay that all persons detained 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 the different versions of the information sheets be consolidated and standardised and always bear mention to the right of a detained person to notify a third party and to access a doctor as stated in Article 69 of the CCP.**

f. custody records

39. The Serbian authorities had invested efforts into the standardization of custody registers as well as their new electronic format which were visible at the time of the visit. Custody registers were generally well kept and more diligently filled in than during past visits. That said, in terms of structure and format, custody registers are still in need of improvement in order to better reconstruct the different phases of the chain of detention and provision of fundamental safeguards. For example, the time and manner of the notification of custody to a third party as well as the modality of the feedback to the detained persons are still missing from the existing documentation as well as the different phases of the contact, appointment and attending of a lawyer to a police station (see paragraph 36). Further, Article 32 of the RPP clearly provides that detention starts with the beginning of the enforcement of police powers. That said, in respect of several files of detained persons examined during its visit, the CPT's delegation found that the start only counted as of the arrival of the detained person to the police station (i.e. several hours after their de facto deprivation of liberty).

**The CPT recommends that the Serbian authorities take action to ensure that the minutes on the detention of a person provides a complete and accurate account of all significant events that take place during a detainee'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>51</sup> and the time(s) that a lawyer actually attends the police station.**

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<sup>51</sup> I.e., the time of the arrest or response to summons in criminal proceedings.

g. conduct of interviews

40. Regrettably, despite the above-mentioned training activities on the development of professional interviewing skills of police officers (see paragraph 14), there has been no positive evolution since the 2017 visit in relation to interviewing suspects. There is an urgent need to radically alter the approach away from interrogating criminal suspects in order to extract a confession towards more sophisticated methods of investigative interviewing such as those advocated by a recent panel of prominent international legal experts (see paragraph 20). In terms of conduct of interviews, Article 289 of the CCP stipulates that the public prosecutor may conduct, attend or delegate to the police the questioning of a criminal suspect. In practice, the CPT's delegation was able to observe that the competent prosecutors routinely delegated by written decision the conduct of interviews to the police in relation to common criminal offences. The Code on Police Ethics stipulates that additional guidelines should regulate in detail the process of interrogation (Article 40). As far as the CPT is aware, such guidelines have yet to be drawn up. In practice, the CPT's delegation found once again that criminal suspects were subjected to long "interrogation" sessions, forced to stand for prolonged periods or to remain in stress positions (i.e. handcuffed on a chair with the hands behind their backs) during which they were not always offered access to food and water.

The CPT considers that there should be formal guidelines on a number of specific aspects concerning interviewing methods by the police (see also paragraph 20). Their existence would make it possible to consolidate the instruction received by police officers during their professional training.

**The CPT reiterates its recommendation that the authorities draw up a code of conduct for police interviews.**

**The code should deal, inter alia, with the following aspects: systematic notification to the detainee of the identity of the persons present during the interview (name and/or number) as well as of the right of the detainee to remain silent during the interview; the authorised duration of an interview; the rest periods between questioning sessions and breaks during an interview; the place(s) where an interview can be conducted; questioning of persons under the influence of drugs, alcohol or medicines or affected by recent concussion.**

**The code should also indicate the systematic audio and/or video recording of the time each interview begins and ends, the identity of every person present during the interview, any request made during it by the person detained and questions asked during the interview. The situation of particularly vulnerable persons (e.g. with mental disorders) should carry specific safeguards. Finally, persons interviewed should not be forced to stand for prolonged periods or placed in stress positions and should have ready access to water and be offered food at appropriate intervals.**

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



41. In the course of the visit the CPT's delegation was able to ascertain that most of the interviews with police suspect were conducted in inspector's offices and were not video or audio recorded despite a specific regulation. For example, an interview room equipped to that end existed at the detention area of 29<sup>th</sup> November Belgrade Metropolitan Police Station but was used for photographing and fingerprinting purposes. By letter received on 23 June 2021, the Serbian authorities informed the Committee that procurement and logistical efforts were ongoing to equip 22 dedicated interview rooms at various police establishments with audio and video-recording facilities by the end of 2021.

**The CPT recommends that the Serbia authorities introduce in practice electronic (i.e. audio and/or preferably video) recording of all police interviews in the light of the remarks in paragraph 20. Further, it would like to be informed of the police establishments where the interview rooms have been equipped with audio and video-recording facilities.**

h. reporting on the use of means of coercion

42. In the course of the visit, the CPT's delegation examined the documentation pertaining to the use of means of coercion by the police in carrying out arrests in the light of the relevant provisions of the Law on Police.<sup>52</sup> Further, the RPP stipulates that the application of means of coercion be the subject of a report in order to certify the compliance with the principles of legality, necessity and proportionality including to the competent Ministerial Commission for the Assessment of the Use of Means of Coercion. In principle, reports on the use of means of coercion were included in the personal files and contained a description of the circumstances. That said, although the police supervisor in charge of the control of the legality was entitled to collect information from witnesses, injured parties and medical documentation, this was never resorted to in respect of the analysed cases.

For example, one detained person (case described in paragraph 17) who had been subject to use of means of coercion (i.e. physical force and rubber truncheons) had later started a hunger strike in protest at the way in which he had been treated at the time of his arrest. The relevant report on use of means of coercion included in the detained person's personal file, and examined by the CPT's delegation, showed that the legality and proportionality of the measure had been endorsed and certified by the supervisor without hearing the detained person or examining the existing medical documentation.

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<sup>52</sup> Article 105 of the Law on Police lists the following means of coercion which can be used by the police: i) physical force; ii) pepper spray; iii) tasers; iv) rubber batons; v) handcuffs; vi) special vehicles; vii) trained dogs; viii) trained horses; ix) water hoses; x) tear gas; xi) fire weapons. Most of the above-mentioned means of coercion are to be used in case of deflecting attacks, managing resistance and self-harming of persons. In particular Article 108 regulates the reporting, supervision and responsibility of the use of means of coercion and it stipulates the following:

- Any use of means of coercion must be reported to a supervisor as soon as possible and within the maximum period of 24 hours (the report in question should include all relevant data including the reasons and justification for the recourse to the means of coercion);
  - The justification of the use of the means of coercion must be assessed by the supervisor and a three-member commission and in case of incorrect use the relevant legal measures are proposed;
  - All relevant statistics concerning the use of means of coercion, their justification and legality must be available to the public.
- The Minister of Interior must further define and regulate the modality of recourse to means of coercion, its control, reporting and recording.

Further, in respect of several cases of persons interviewed by the CPT's delegation against whom use of force and means of coercion had been applied at the time of their apprehension, the relevant custody records and personal files of detainees at the relevant police stations did not contain any report on the use of means of coercion pursuant to Article 105 of the Law on Police.

**The CPT recommends that the reports on the use of means of coercion are drawn up promptly and accurately, in accordance with Article 105 of the Law on Police, and that the assessment of the compliance of such coercion with the principles of necessity, proportionality and legality s be conducted with an analysis of all relevant information by the direct supervisor. Finally, reports on the use of means of coercion should be drawn up in respect of all cases in which the use of force has been necessary, in particular at the time of the apprehension of a detained person.**

## 5. Conditions of detention

43. The CPT's delegation found that considerable efforts had been made to improve the conditions in the detention areas of police facilities since the 2017 visit. In May 2018, a new Rulebook on the Conditions of Detention in Police Premises was adopted which regulates *inter alia* the size of police detention cells<sup>53</sup>, the provision of mattress and bedding for detention periods in excess of 12 hours, in-cell ventilation, CCTV, a separated sanitary annex and call bells, as well as the provision of three meals a day for persons detained longer than twelve hours.

The above-mentioned Rulebook envisages that all police detention facilities should be renovated by May 2021. At the outset of the visit, the CPT's delegation was informed that 140 of the 223 police detention cells now complied with the Rulebook's standards, with 60%<sup>54</sup> of the renovations having been carried out since the CPT's 2017 visit.

44. The CPT's delegation found that the conditions of detention in the police establishments visited in the Belgrade Metropolitan area were generally good: cells at Voždovac, Zvezdara, Savski Venac, 29<sup>th</sup> November Police Stations had all been renovated since the CPT's 2017 visit. Access to natural light (through a perforated metal grill), ventilation and a heating system were satisfactory, and cells were equipped with mattresses (bedding/blankets was provided to detained persons), a semi-partitioned sanitary annex, CCTV and a call bell. Further, cells were generally in a good state of repair and hygiene.

The conditions of detention in the two double-occupancy cells at Niš Medijan Police Station were similarly good.

In accordance with an inter-ministerial memorandum, some prison establishments continued to possess cells for the detention of criminal suspects who were supervised by police officers during this period of police custody. The CPT's delegation observed that conditions were very good in the two cells in use at Pančevo Correctional Institution (cells were of the same design as those for sentenced prisoners) and in the one cell in use at the remand section of Požarevac Correctional Institution.

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<sup>53</sup> 7 m<sup>2</sup> for single occupancy and an additional 4 m<sup>2</sup> of living space for each supplementary person.

<sup>54</sup> 18 detention facilities with a capacity of 29 places, were renovated with State funds and 63 cells (128 places) with the financial assistance of the Norwegian Government.

**The Committee notes positively the investment made by the Ministry of the Interior since 2017 to provide decent conditions of detention in police facilities and it would like to be informed about the timetable for the renovation of the remaining 83 police detention cells.**

45. The CPT's delegation found that detained persons were offered food and water, in accordance with the Rulebook on Conditions of Detention in Police Premises, once they were transferred to the custodial areas of a police station.

However, in terms of personal hygiene, not all police establishments visited possessed a stock of sanitary pads for women who were detained or soap for persons to wash their hands.

**The CPT recommends that action be taken to ensure that all police stations possess a stock of basic hygiene products such as soap and sanitary pads for detained person. Further, the Committee also recommends that detained persons should be provided with food and water after eight hours from the start of their deprivation of liberty. In this respect, the relevant provision of the Rulebook on the Conditions of Detention Premises should be amended accordingly.**

## **B. Prison establishments**

### **1. Preliminary remarks**

#### a. legislative changes and strategic documents

46. The 2019 amendments to the Law on Execution of Criminal Sanctions (LECS) have introduced important novelties in the legal framework governing the Serbian prison system such as the possibility for inmates sentenced to up to one year of imprisonment to request the execution of sentence at their domicile,<sup>55</sup> the possibility for the judge of execution to grant early release under certain conditions in respect of the last twelve months of incarceration,<sup>56</sup> the possibility for inmates to be engaged in work outside of the prison<sup>57</sup> as well as modification of the role of health-care staff in the context of disciplinary proceedings (see paragraph 99).

Further, as part of the overall reform of the prison system, the Ministry of Justice drafted a Strategy for the Development of the System of Enforcement of Criminal Sanctions for the period 2021 to 2027 (Strategy). The Strategy addresses inter alia the reinforcement of prisoners' rights, the improvement of material conditions, an individualised thematic approach towards the treatment of different categories of prisoners (see paragraph 63), better quality of prison health-care, the reinforcement of the system of non-custodial sanctions and their supervision as well as the creation of a system of oversight and inspection of the prison system. A public consultation on the 2021-2027 Strategy was launched in May 2021 with the civil society.

47. The process of European integration of Serbia, in particular as concerns the ongoing negotiations on Chapter 23 of the *acquis* of the EU has also been the motor of several strategic reforms in the penitentiary field, as several benchmarks are included in the EU negotiation framework which are based on the CPT's direct observations and recommendations such as, e.g. Goal No. 3.1.1 of the Revised Action Plan on Chapter 23 of the EU Accession Negotiations.<sup>58</sup> Further, several EU twinning<sup>59</sup> and Council of Europe (CoE) co-operation projects<sup>60</sup> were implemented over the last five years in order to support the system of non-custodial sanctions (in particular house arrest with electronic monitoring, house detention with electronic monitoring and suspended supervised sentences), the development of the parole system, the setting up of specialised individual treatment plans and pre- and post-release assistance programmes for inmates as well as the training of custodial and prison health-care staff on various thematic issues of relevance for the CPT.

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<sup>55</sup> To this effect the sentenced person must file a motion to the competent judge for the execution of sanction pursuant to Article 41a of the LECS.

<sup>56</sup> The conditions in question refer to serious illness, disability or elderly age and are enshrined in Article 184a of the LECS. Another condition for early release to be granted by the judge for execution of sanctions is that nine tenths of the sentence must have been served by the inmate in question.

<sup>57</sup> Pursuant to Article 102a of the LECS upon a decision of the judge for execution of sanction following a proposal of the relevant prison director.

<sup>58</sup> The strategic goal No. 3.1.1 reads as follows: "*Serbia implements all the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and invests in improving the infrastructure and living conditions in prisons (including health-care), detention centers and psychiatric institutions. Serbia is actively working to reduce overcrowding and is conducting training and awareness-raising activities on the rights of detainees.*"

<sup>59</sup> See in this respect the EU-funded (IPA 2015) project "Improving Capacities of the Prison Administration in the Area of Alternative Sanctions, Post Penal Care and Health-care".

<sup>60</sup> See for example the 2017-2019 CoE project in the context of the EU Horizontal Facility under the title: "Serbia - Enhancing human rights protection for detained and sentenced persons in Serbia".

b. prison overcrowding and prison estate

47. The phenomenon of overcrowding in Serbian prisons has been addressed in successive CPT reports since 2011 and, in response, the Serbian Government adopted the 2011 and 2015 Strategies for the Reduction of Prison-overcrowding in the Institutions for the Enforcement of Criminal Sanctions. The Strategies aimed to increase the capacity of the prison estate, develop a coherent set of non-custodial measures (such as e.g. house arrest and house detention with and without electronic monitoring) as well as reduce the rate of recidivism.

At the time of the 2021 visit, the prison population stood at 10,844<sup>61</sup> (i.e. a ratio of 156 per 100,000 population) for a total capacity of 11,451 places.<sup>62</sup> Thus since 2012, the prison population has decreased by some 500 persons while the capacity has been increased by 1,300 places primarily through the construction and entry into service of Pančevo Correctional Institution (555 places) in 2018,<sup>63</sup> and of new pavilions at Sremska Mitrovica Correctional Institution (320 places), at Leskovac District Prison (220 places) and at Požarevac Correctional Institution (216 places) and Požarevac Correctional Institution for Women (165 places). Further, a new prison in Kragujevac (500 places) and the entry into service of Pavilions III and IV at Požarevac Correctional Institution (see paragraph 58) will further increase the prison estate capacity in the course of 2021. That said, instances of local overcrowding in some pavilions of Požarevac Correctional Institution as well as in several cells of Belgrade District Prison remain (see paragraph 55).

The CPT notes positively that the proportion of remand prisoners of the overall population decreased from 30 % in 2010 to 18.6 % in 2020 due to the increased use of alternative non-custodial measures by the judicial authorities. Further, decisions to grant parole have also increased considerably since 2015.<sup>64</sup>

The CPT welcomes the successful measures taken by the Serbian authorities to substantially reduce the prison population and to put an end to prison overcrowding. **The CPT encourages the authorities to remain vigilant in maintaining the prison population below the capacity of the prison estate to avoid local overcrowding and to retain a margin for managing prisons within their designated capacities.**

c. life imprisonment without parole

48. The CPT has noted that adoption of Article 44a of the Criminal Code as amended in May 2019 allows for the imposition of a sentence of life imprisonment without parole in relation to certain criminal offences such as the rape and murder of a minor, pregnant or a disabled person as well as the murder of a high State official. The reform stemmed from a public initiative promoted by civil society which collected more than 150,000 signatures in support of the introduction of this provision.

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<sup>61</sup> In addition, 2,219 persons were serving a non-custodial sanction at the time of the visit (i.e. 511 house detention with electronic monitoring, 963 house detention without electronic monitoring, 329 house arrest with electronic monitoring, 87 house arrest without electronic monitoring, 155 community services work, 29 conditional release with supervision, 145 under other security measures of a non-custodial nature).

<sup>62</sup> I.e., an occupancy rate of 94,7 %.

<sup>63</sup> The construction had been funded through a 21M Euros loan of the CoE Development Bank.

<sup>64</sup> Since 2012, there has been an increase in the number of persons released on parole. Out “of all released inmates, persons released on parole accounted for between 8% in 2012, 26.9% in 2016, and 26.6% in 2020.

On 2 December 2019, a pool of NGOs filed a motion before the Serbian Constitutional Court to review the constitutionality of the amendments to the Criminal Code prohibiting conditional release of perpetrators of crimes carrying a life sentence,<sup>65</sup> arguing that serving of a life sentence without the possibility of parole amounted to inhuman and degrading punishment under the European Convention on Human Rights. The first life sentence without the possibility of parole was handed down in early January 2021 by a first-instance criminal court.<sup>66</sup>

The CPT has expressed serious reservations<sup>67</sup> regarding the fact that a person sentenced to life imprisonment is considered once and for all to be dangerous and is deprived of any hope of conditional release. The Committee maintains that to incarcerate a person for life without any real prospect of release is, in its view, inhuman.

Indeed, the CPT considers that a prison sentence which offers no possibility of release precludes one of the essential justifications of imprisonment itself, the possibility of rehabilitation. This is not to say that all life-sentenced prisoners should be released sooner or later; public protection is a crucial issue. However, all such sentences should be subject to a meaningful review at some stage, based on individualised sentence-planning objectives defined at the outset of the sentence, and reviewed regularly thereafter. This would provide not only hope for the prisoner, but also a target to aim for which should motivate positive behaviour. It would thus also assist prison administrations in dealing with individuals who would otherwise have no hope and nothing to lose.

It is noteworthy that this view, also defined as a right to hope, has been supported by the case-law of the European Court of Human Rights in several cases.<sup>68</sup>

**The CPT recommends that the Serbian authorities review Article 44a of the Criminal Code to ensure that all persons sentenced to life imprisonment are offered the hope of being able to be granted conditional release, in the light of the above remarks.**

d. prisons visited

49. During its 2021 periodic visit, the CPT's delegation carried out follow-up visits to Belgrade District Prison, the adjacent Special Prison Hospital (see Section 7 below) and Požarevac Correctional Institution. It also visited the recently inaugurated Pančevo Correctional Institution.

Belgrade District Prison was accommodating 963 prisoners, of whom 848 were on remand and 115 sentenced, for an overall capacity of 1,120 places. The remand population included 45 women and seven male juveniles. The CPT's delegation also paid a visit to the self-standing Special Pre-trial Detention Unit, located a few blocks away within the compound of the Belgrade Higher Court, which was accommodating 72 persons for an overall capacity of 110 places.

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<sup>65</sup> See Belgrade Centre for Human Rights's "[2019 Human Rights in Serbia](#)" report, pp. 55-57. In particular under the current legislation inmates sentenced to up to 40 years of incarceration may be eligible to conditional release after serving 27 years of imprisonment.

<sup>66</sup> See in this respect <https://www.telegraf.rs/english/3285098-historic-verdict-court-sentences-barber-of-malca-to-life-in-prison-for-abusing-a-girl>.

<sup>67</sup> See paragraph 73 of the 25<sup>th</sup> General Report on the CPT's Activities CPT/Inf (2016) 10.

<sup>68</sup> See, for example, the most authoritative judgment issued up to date on this matter (*Vinter and Others v. the UK* [GC], Nos. 66069/09, 130/10 and 3896/10, 9 July 2013) as well as the cases of *László Magyar v. Hungary* (application no. 73593/10), issued on 20 May 2014 and *Petukhov v. Ukraine (No.2)* (application No.41216/13) issued on 12 March 2019.

Pančevo Correctional Institution, located six kilometres east of the city on the eastern bank of the Danube river, consists of a two-floor hexagonal panopticon structure comprising twelve pavilions,<sup>69</sup> one disciplinary block, one admission block and the infirmary. The establishment also possessed a separate special detention unit (intended to accommodate protected witnesses in the near future) as well as a modern production plant, two sports fields and seven outdoor exercise yards, each equipped with basketball hoops. At the time of the visit, the establishment accommodated 366 male prisoners (286 sentenced,<sup>70</sup> 50 on remand and 30 for misdemeanour offences) for an overall capacity of 609 places. The prison establishment possessed a modern and sophisticated CCTV system covering all areas outside of the accommodation cells.

Požarevac Correctional Institution, located some 70 kilometres south of Belgrade in the neighbourhood of Zabela, is one of the oldest prisons in Serbia, having been first inaugurated in 1865. At the time of the visit, it accommodated 1,429 adult male prisoners for an overall capacity of 1,434 places. The establishment consisted of seven closed-regime pavilions, one admission block, an infirmary, one self-standing special regime detention unit, a semi-open and an open-regime section. The remand unit was located six kilometres away in Požarevac and was accommodating 20 persons, including two women for a capacity of 40 places. At the time of the visit, a newly constructed Pavilion VI with 214 places had just entered into service with, and the construction works on Pavilions III (224 places) and IV (216 places) were to be completed in the course of 2021.

## 2. Ill-treatment

50. At Belgrade District Prison, the CPT's delegation did not receive any allegation of physical ill-treatment of detained persons by custodial staff; sentenced and remand prisoners told the delegation that they were treated correctly by prison guards.

At Pančevo and Požarevac Correctional Institutions, a few allegations of physical ill-treatment and excessive use of force by staff against prisoners displaying challenging and recalcitrant behaviour or committing acts of self-harm were received by the CPT's delegation. These consisted mainly of blows with truncheons, slaps, kicks and punches to various parts of the prisoners' bodies. All the cases examined had been recorded as a resort to means of restraint pursuant to Article 143 of the LECS and were in principle well documented, with the injuries accurately recorded and photographed by health-care staff. That said, the resort to physical force and the use of rubber batons appeared in several instances to be excessive and disproportionate. The following cases represent an illustration of the delegation's findings at Pančevo and Požarevac Correctional Institutions:

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<sup>69</sup> Eight for closed-regime prisoners, two for remand detention, one for misdemeanour offenders and one for inmates subject to the semi-open regime.

<sup>70</sup> I.e., 217 under closed, 59 semi open and 10 open regime.

- i. a sentenced prisoner alleged that on 16 July 2019, while accommodated in the prison medical block following a crisis caused by a change in his psychiatric medication, he had threatened to cut his throat with a pair of metal keys which resulted in two prison officers beating him. Apparently, the attempt by one officer to control him using a neck hold was unsuccessful, prompting the second prison officer to hit him repeatedly with a rubber baton in order to control and handcuff him. The CCTV footage covering the corridor in front of the cell in question showed that the whole intervention had lasted 4 minutes and 34 seconds. When he was brought to the doctor, the following injuries were recorded in his medical file: *“tram-line hematoma 10cm x 2cm on the left side of the back, hematoma 2 cm in size in the area of the scalp, excoriation 1 cm in length behind the left ear.”*;
- ii. a 68-year-old misdemeanour offender alleged that on 20 January 2021, after having a verbal altercation with a female educator, a prison officer had tried to immobilise him with a neck hold but released him when he had complained that he could not breathe. After being released, the prisoner hit the custodial staff with a punch on the left orbital region. This prompted the second prison officer to resort to the use of a rubber baton and hit him several times on his back, arms and legs. When examined by the prison doctor the following injuries were recorded in the detainee’s medical files, photographed and assessed as a result of the use of rubber baton: *“hematoma on the left cheek 3 cm in length, hematoma of 3 cm on both scapulas, two tram-line hematomas on the right and left side of the lumbal area 4 cm x 2 cm and 6 cm x 2 cm in size, on the left shoulder reddish erythema of an irregular shape, on the right gluteus multiple tram-line hematomas 10 cm x 1 cm in size, on the left gluteus multiple tram-line hematomas 15 cm x 3 cm in size, on the left thigh hematoma of an irregular size of 5 cm in length, on the left thigh tram-line hematoma 10 cm x 3 cm in size, on both forearms light erythemas.”*;
- iii. a sentenced prisoner stated that on 20 October 2020, following a verbal altercation with prison staff over his telephone entitlements during outdoor exercise in Pavilion VII, he was ordered to put his hands on the wall while turning his back in a search position which he refused to do. Subsequently, three more prison officers intervened and he alleged that once he had placed his hands on the wall as ordered, they hit him several times with rubber batons on his back, shoulders, legs and fingers. When he was examined by the prison doctor soon thereafter the following injuries were recorded and photographed: *“low-intensity erythema on the neck; on the back there are some red changes with blurred borders, intersecting; on the left shoulder towards the middle of the back there are three tram-line hematomas located in parallel with dimensions 10 cm x 3 cm and 22 cm x 3 cm. The third begins with a hematoma with unclear borders 15 cm x 3 cm and continues to the middle of the back for a total size of 25 cm x 3 cm. Below them there is redness with uneven edges. On the right shoulder there is erythema reaching the upper half of the right shoulder blade and two pale red changes in it to the left side of the back. On the right arm there is a linear hematoma 15 cm x 2 cm around the limb. On the left forearm there is a hematoma 7 cm x 5 cm. On the lower third of the right forearm there is a linear reddish lesion 6 cm x 2 cm with a hematoma in the surrounding tissue. There is a small swelling around the right wrist. There is redness on the right knee. There is a small hematoma on the lateral surface of the left knee 5 cm x 1.5 cm. On the left lower leg there is an oval-shaped abrasion 3 cm x 1.5 cm in size.”*



51. The CPT notes that the 2019 Rulebook on the Measures for Keeping Good Order and Security in Establishments for the Execution of Criminal Sanctions regulates *inter alia* the use of means of restraint and the application of use of force, including rubber batons. Articles 11 and 21 of the above-mentioned Rulebook specifically state that the use of means of restraint should not be applied to elderly or sick prisoners, that all use of force should be proportionate and limited to bringing the prisoner under control, and that any truncheon blows should not be directed at a prisoner's head, neck, spine, kidneys, genitals or elbows.

The CPT recognises that prison staff will on occasion have to use force to control violent and/or recalcitrant prisoners. Hence it is important that any use of force is strictly regulated, as set down in the above-mentioned Rulebook. Truncheons can only be applied when – and to the extent – strictly necessary to maintain security and good order, and never as a form of punishment.

**The CPT recommends that the Serbian authorities ensure that all prison officers strictly abide by the provisions set out in the 2019 Rulebook and that every application of the use of force and means of restraint is fully documented and subject to rigorous oversight by the prison management. Further, every prison officer 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.**

52. The findings of the 2021 visit demonstrate that inter-prisoner violence and intimidation remains widespread in Serbian prisons. Such violence has several causes such as the poor regime, accommodation in dormitories, overcrowding in some parts of the establishments visited, trade in psychoactive substances, prisoner debts and understaffing. For example, at Požarevac Correctional Institution, there had been two serious cases of inter-prisoner violence which had been referred by the prison management to the local competent prosecutor in the course of 2020.

In practice, it appeared that prison staff intervened promptly when alerted to fights among prisoners. Prisoners were promptly escorted by staff to the infirmary where their injuries were recorded and photographed. Incidents resulting in serious injuries such as suspected bone fractures were referred by the prison management to the law enforcement authorities. However, it appeared that there was no analysis of the root causes of such violence nor any signs of a strategy to counter this phenomenon in any of the prisons visited.

53. Addressing the phenomenon of inter-prisoner violence requires a multi-faceted approach which will include enhanced ongoing monitoring of the prisoners' behaviour (including the identification of potential perpetrators and victims), with a particular focus on the situation in the cells in the evening/at night (for example, by more frequent and irregular visits by staff), the proper reporting of suspected and confirmed cases of inter-prisoner intimidation/violence, the thorough investigation of all incidents and, where appropriate, the adoption of suitable sanctions or other measures, as well as the development of effective violence reduction interventions. The management and staff should pay increased attention to the risk and needs assessment, classification and allocation of individual prisoners with a view to ensuring that prisoners are not exposed to other inmates who may cause them harm.

Further, the prison administration should be alerted to knock-down effects that issues such as the illegal trade of psycho-active substances and accumulated debts among prisoners play in fuelling the level of inter-prisoner violence and intimidation. Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Both initial and on-going training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

**The CPT reiterates its recommendation that the Serbian authorities elaborate an effective national strategy to tackle inter-prisoner violence and intimidation, taking into account the above approach.**

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

#### **a. material conditions**

54. At Belgrade District Prison, the nine renovated blocks offered generally acceptable conditions, with cells being of sufficient size<sup>71</sup>) well ventilated, and with adequate access to natural light and sufficient artificial lighting. They were equipped with bunk-beds, wooden tables and chairs, personal lockers, a TV and occasionally refrigerator, and a fully partitioned sanitary annexe. Nevertheless, efforts need to be made in a number of cells to replace the old, worn mattresses, address the bed bug infestation, fix the malfunctioning artificial lighting and broken wash basins. Further, cells did not possess a call bell.

The three unrenovated blocks, accommodating 181 remand prisoners, were in a particularly dilapidated state which had only worsened since the CPT's 2017 visit,<sup>72</sup> notably as concerns poor access to natural light and ventilation, high levels of humidity, dangerous electrical wiring, and non-partitioned sanitary annexes. These blocks should be renovated before the end of 2022.

**The CPT recommends that the Serbian authorities put in place a rolling programme of maintenance at Belgrade District Prison, notably as regards replacing old and worn mattresses, deficient lighting and broken wash basins as well as disinfecting those blocks blighted with infestations. It also recommends that all the cells be equipped with a call bell. The CPT would also like to receive details about the renovation of the remaining three blocks, including the timing for their completion.**

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<sup>71</sup> For example, four persons in 16 m<sup>2</sup>, six persons in 24 m<sup>2</sup> and ten persons in 40 m<sup>2</sup>.

<sup>72</sup> See in particular paragraph 41 of the CPT's report on its 2011 periodic visit to Serbia CPT/Inf (2012) 17.

55. The 35 cells of the Special Pre-trial Detention Unit in Ustanička Street offered satisfactory material conditions in terms of space (i.e. a standard cell measured 19 m<sup>2</sup> and could accommodate five persons), state of repair and hygiene, and were equipped with two sets of bunk-beds and a single bed, tables and chairs, personal lockers, shelving units, a TV and a fully partitioned sanitary annexe. That said, access to natural light was poor as the cell windows were covered by a triple screen of metal bars, perforated metal mesh and obliquous metal grilles for security reasons. Further, the artificial lighting was insufficient for reading purposes and the cells possessed no call bell. **The CPT recommends that steps be taken to improve both access to natural light and the artificial lighting in the cells and that each cell be equipped with a call bell. Standard cells should not accommodate more than four persons.**

56. As should be expected, the material conditions in the 218 double-occupancy cells at Pančevo Correctional Institution were of a good standard. The cells, each measuring approximately 12 m<sup>2</sup>, were equipped with a bunk-bed, wooden table and chairs, personal lockers and shelving unit and a TV. Access to natural light was good as was the artificial lighting and ventilation and the cells possessed floor heating, a call-bell, interphone and fire alarm bell. The fully partitioned sanitary annex was equipped with a wash basin, shower, toilet and anti-slip flooring. Efforts were made to maintain the establishment at a good level of hygiene and state of repair; for example, some cells have been taken out of service following the discovery of an infestation of bed bugs.

57. At Požarevac Correctional Institution, the delegation found that the renovation of the establishment was ongoing, with only one (Pavilion VI) of the three newly constructed pavilions operational.<sup>73</sup> Conditions in Pavilion VI were very good; cells (measuring 24 m<sup>2</sup> and accommodating five persons) had good access to natural light and ventilation, sufficient artificial lighting and were adequately equipped (i.e. beds, tables, chairs, shelving units, personal lockers, TV and call bell). The fully partitioned sanitary annexe contained a toilet and a wash basin. The shower facilities were individually partitioned and had anti-slip floor surfaces. Communal rooms, equipped with tables and chairs, a kitchenette and a TV were spacious, well-ventilated and offered a relaxed environment.

The 83 cells of Pavilion VII had been upgraded since the CPT's previous visit in 2011, with the in-cell sanitary annexes now fully partitioned. The cells, measuring 8 m<sup>2</sup>, offered satisfactory conditions for single occupancy<sup>74</sup> and were equipped with a bed, table, chair and in some cases a refrigerator. However, conditions were cramped in the 30 cells used for double occupancy and in the 33 cells which accommodated three person each the conditions might amount to inhuman and degrading treatment, especially as all the prisoners were confined for 22 hours a day in their cells. Further, the provision of water to cells located on the second floor was intermittent during the day due to the malfunctioning water pump and some cells were in a poor state of hygiene and state of repair (i.e. dilapidated furniture and crumbling walls). The eight cells located on the basement were in a state of abandonment and dilapidation (i.e. rusty beds, semi-partitioned sanitary annexes with broken toilets and wash basins), and while they had been taken out of service in 2020, the delegation was informed by both staff and prisoners that they had been used for quarantining purposes during the Covid-19 pandemic.

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<sup>73</sup> Pavilions III and IV, with a capacity of 214 and 234 places respectively, were planned to open before the end of 2021.

<sup>74</sup> Nine prisoners, serving sentences of 30 to 40 years of imprisonment each had their own cell.

58. Pavilions I, II, V and the admission ward offered poor conditions. Dormitories were crowded, with 20 prisoners accommodated in 40 m<sup>2</sup> in Pavilion V and six prisoners in 16 m<sup>2</sup> in Pavilions I and II and 15 prisoners in 35 m<sup>2</sup> in the admission ward. There was a general neglect in the upkeep of these Pavilions with broken windows, malfunctioning lighting, an absence of personal locking space, missing chairs and tables and no call bells. Further, the sanitary facilities were dilapidated and unhygienic (dripping faucets and water installations, broken toilets and showers, wet and slippery flooring). In Pavilion V, the delegation found 96 prisoners having to share only two toilets and one shower, which was totally inadequate to meet their needs.

The six rooms of the one storey section located just behind Pavilion V were accommodating 27 prisoners with special needs<sup>75</sup> and had purportedly been renovated in 2015. However, two of the rooms had no access to natural light while two other rooms only possessed a small roof window in the ceiling. The CPT's delegation received guarantees that Pavilions I and II would be vacated once Pavilions III and IV entered into service. On the other hand, there was no timetable for the 220 prisoners accommodated in Pavilion V to be transferred to better living conditions. By communication received on 15 June 2021, the Serbian authorities informed the Committee that Pavilion V of Požarevac Correctional Institution had been taken out of service and that the prisoners had been transferred to the newly constructed Pavilion III which in the meantime had come into service.

**59. The CPT calls upon the Serbian authorities to take urgent steps at Požarevac Correctional Institution to ensure that:**

- **in Pavilion VII, none of the 8 m<sup>2</sup> cells are used to accommodate three persons; cells of 8 m<sup>2</sup>, including a sanitary annexe, are also not appropriate for accommodating two persons especially if they are confined to their cells for 22 hours a day. Further, all cells in this pavilion should be suitably equipped and maintained in a decent state of repair and hygiene. The water pump supplying water to cells located on the second floor of the building should be repaired;**
- **in the section for prisoners with special needs, located behind Pavilion V, the two rooms lacking access to natural light be taken out of service;**

**Further, the CPT would like to receive information on the conditions provided to prisoners in Pavilion III (size of cells, capacity, equipment, etc.) and to be informed about the proposed entry into service of Pavilion IV. Further, it would like to be informed about the timetable for closure of Pavilions I and II as well as future plans concerning the refurbishment of the admission ward and the reduction of its local overcrowding.**

60. The 10 cells of the separate pre-trial detention unit in the town of Požarevac offered adequate living space (e.g. five persons in 20 m<sup>2</sup>) and were suitably equipped (bunk-beds, wooden benches and tables, a TV and a fully-partitioned sanitary annex). That said, access to natural light was poor due to the double grilles placed on the windows, ventilation was not adequate, and there were no call bells. **The Committee would like to be informed about the timetable and progress in the construction of a new pre-trial detention unit in the vicinity of Požarevac Correctional Institution.**

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<sup>75</sup> The population consisted of elderly prisoners or inmates with reduced mobility.

61. The CPT's delegation was positively impressed by the equipment, level of hygiene and variety of food offered to prisoners at Pančevo Correctional Institution. Food was distributed in thermo-heated containers and prisoners were complimentary of the quality and variety of food as well as the respect for dietary needs. At Belgrade District Prison, the CPT's delegation did not receive complaints about the quality of food and its variety.

On the other hand, at Požarevac Correctional Institution, the CPT's delegation received numerous complaints about the quality of food, its monotonous nature and poor caloric intake. The review of menus confirmed both the poor variety and the lack of fresh fruit and vegetables. Further, the inspection of the kitchen and adjacent refectory revealed poor hygienic conditions both as concerns kitchen facilities and storage of food: the premises were damp, staff were not wearing protective clothing, rubbish not adequately disposed infestation of birds and omnipresent droppings, dilapidation of chairs and tables where inmates were taking meals.

**The CPT recommends that steps be taken at Požarevac Correctional Institution to improve the quality and quantity of food provided to prisoners; the daily menus should comply with minimum nutritional standards. Further, meals should be distributed to prisoners at an adequate temperature, and respect hygiene standards. In addition, hygiene and cleanliness in the kitchen should be improved and thereafter properly maintained and all food stored appropriately.**

b. regime

62. At the outset of the visit, the Head of the Prison Administration emphasised the approach of developing an individualised and thematic approach towards prisoners' rehabilitation and the overall fight against recidivism. Further, a number of EU and CoE funded projects implemented in Serbia in recent years have focussed on the development of individualised treatment plans and behavioural programmes for different categories of inmates, the creation of pre-release and post-penal care programmes and the training of treatment staff on the practical aspects of their implementation.

63. As regards the regime in force for remand prisoners at the establishments visited, the CPT's delegation noted that seven of the 20 prisoners at Pančevo Correctional Institution worked assembling plastic clothes pegs for four hours per day, for which they were paid. Such an initiative constituted a pilot project<sup>76</sup> and the prison administration had the intention to extend it to other establishments. Further, remand prisoners at Pančevo Correctional Institution were allowed access to the indoor sports facility once a week for two hours in addition to the daily entitlement of two hours of outdoor exercise in yards equipped with basketball hoops and table-tennis. These are positive developments to be further expanded.

However, remand prisoners at Belgrade District Prison and in the remand section of Požarevac Correctional Institution were offered no activities and spent the whole day confined to their cells apart from periods of up to two hours of outdoor exercise in yards devoid of any sports equipment.<sup>77</sup>

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<sup>76</sup> A detailed risk assessment had been conducted by the prison administration for the selection of remand prisoners in consultation with the competent judicial authorities.

<sup>77</sup> Two of the four portioned yards at Belgrade District Prison were equipped with some traction bars and basketball hoops.

**The CPT calls upon the Serbian authorities to take concrete measures to develop a programme of activities for all remand prisoners building on the efforts initiated at Pančevo Correctional Institution. The aim should be to provide prisoners with eight hours of out-of-cell activities (work, vocational courses, education, recreation and sports).**

**Further, the CPT recommends that the Serbian authorities ensure that all remand prisoners are offered at least two hours of outdoor exercise every day, in accordance with the law.**

64. The CPT's delegation found that sentenced prisoners at Pančevo Correctional Institution were offered a wide range of activities in the respective modules such as an open-door regime during the day, generous outdoor entitlements (of three to four hours) to the courtyards equipped with basketball hoops and traction bars, two sports fields as well as access to an indoor sport facility and well-furnished gym five days a week for one hour. Further, the treatment department had established a wide programme of vocational,<sup>78</sup> educational,<sup>79</sup> recreational<sup>80</sup> and religious activities involving inmates according to their profiles. In addition, 136 of the 286 sentenced prisoners had a paid job at the time of the visit.<sup>81</sup> In addition to the good level of activities offered, the CPT's delegation found that the treatment staff were enthusiastic and professional.

As regards the 115 sentenced prisoners at Belgrade District Prison, they enjoyed an open cell regime and could access communal facilities during the day and were offered access to outdoor exercise for two hours every day. Activities included educational courses and vocational training<sup>82</sup> funded by a German humanitarian organisation, and 52 prisoners were involved in a remunerated activity linked to the kitchen, food distribution and prison maintenance.

65. By contrast, at Požarevac Correctional Institution many sentenced prisoners were offered no activities at all. For example, the 183 prisoners accommodated in Pavilion VII (including nine inmates serving sentences of at least 30 years) were in general confined to their cells for 22 hours per day and only had access to the two outdoor exercise yards for two hours per day. This is clearly totally inadequate.

The remainder of the closed regime prisoners were granted in principle an out-of-cell regime during the day which they spent in the common rooms, three to four hours of outdoor exercise and access to a poorly equipped gym once a week. Some prisoners attended educational courses,<sup>83</sup> vocational training<sup>84</sup> and religious activities. A sports field, consisting of a football pitch and an athletics track was only used during the summer period. Prisoners could also access a well-stocked library, an art and a carving workshop

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<sup>78</sup> For example, in 2020, course on hairdressing (five prisoners), PVC joinery plant (24 prisoners) and agricultural work (10 prisoners) had been organised.

<sup>79</sup> 32 were prisoners were enrolled but could not start physical lessons due to the Covid-19 pandemic.

<sup>80</sup> For example, regular monthly painting, drawing and carving workshops as well as access to a modern well-stocked library holding more than 3,000 titles.

<sup>81</sup> The inmates were employed in the following tasks: kitchen (32), laundry (4), barber (3), canteen (4), library (1), craft art (2), warehouse (5), maintenance (4), hygiene (32), PVC production (18), farm (31).

<sup>82</sup> Nine prisoners were attending primary school and 54 prisoners were involved in vocational courses; IT specialist (30), hairdresser (10), painter (5) and baker (9).

<sup>83</sup> In 2019/2020, 45 prisoners attended primary school and in 2020/2021, 29 prisoners were enrolled in primary school.

<sup>84</sup> In 2020, 50 prisoners attended course on vegetable growing (10), welding (12), manufacture of furniture (10), baker (18).

In the course of 2020 679 prisoners had been regularly working in metal production, warehouses, woodwork, agriculture, transport and catering whereas in the course of 2021 only 100 inmates were involved in the same remunerated activities. The prison management was striving to provide work opportunities but the existing plant, warehouses and production infrastructure were dilapidated and in need of investment.

66. The Committee takes note of the efforts invested by the Serbian authorities to enlarge the offer of purposeful activities to sentenced prisoners and to promote a more individual approach to their treatment and to the preparation of their re-integration into the community. Nevertheless, further efforts and investment are required, notably at Požarevac Correctional Institution.

**The CPT recommends that the Serbian authorities further develop the offer of a regime of purposeful activities for sentenced prisoners in all prisons and notably at Požarevac Correctional Institution.**

c. classification of prisoners

67. As it has been the case during past visits, the CPT's delegation examined the process of classification, re-classification and progression of inmates in the light of the relevant Rulebook<sup>85</sup> and through the work of treatment staff. According to the system in place inmates are initially assessed by treatment staff upon admission in the course of the 30-day admission period through a risk assessment tool<sup>86</sup> and classified into one of the three groups (and sub-groups) by the prison director upon a proposal of the expert's team.<sup>87</sup> An individual treatment plan is also adopted at that time taking into account the prisoner's input. Re-classification to a different group is based on the achievement of the goals outlined in the treatment programme during the periodic reviews. Such decisions are delivered in writing to the inmate and can be appealed to the Head of the Prison Administration and to the competent judge for the execution of sanctions.<sup>88</sup>

The situation observed during the 2021 periodic visit indicated that treatment staff was in general striving to offer a professional classification of inmates and promote their progression in the classification scale to a better regime and extended benefits. In this respect, the implementation of the specialised individual treatment programmes for different categories of prisoners (see paragraph 47) could provide a more targeted and diversified approach to inmates' progression and rehabilitation. In general, the findings of the 2021 visit showed that the individual treatment plans appeared to be more consolidated and substantive than those observed during the previous visit in 2015.

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<sup>85</sup> A new Rulebook on Treatment, Treatment Plan, Classification and Re-classification of Sentenced Prisoners had come into force in 2015 which was not in force at the time of the past CPT's periodic visit in 2015.

<sup>86</sup> An inmate's classification depends on the point obtained in the tool "OASys risk assessment"; reclassification depends on fulfilling the sentence programme.

<sup>87</sup> With a view to realising the individual treatment programmes sentenced prisoners are initially categorized into grades and groups as follows: closed regime with group V2 and V1 (they are not entitled to prison leaves); semi open regime with groups B2 and B1 enjoy benefits in terms of extended visit entitlement and permits; and open regime, group A2 are entitled to prison leave up to 96 hours a month and group A1 (prison leave up to 120 hours a month).

<sup>88</sup> Pursuant to Article 75 of the LECS.

On the other hand, prisoners serving long sentences had few possibilities to progress to a better regime due to the nature of their crimes. Such prisoners met by the delegation believed that this impacted not only on their access to benefits but also to their access to educational courses, work and other rehabilitation activities. For example, an inmate serving a 35-year sentence had been accommodated at Pavilion VII of Požarevac Correctional Institution under the closed-regime since 2010 and had progressed from V2 group to V1, accumulating benefits in terms of extended parcels and visiting entitlements.<sup>89</sup> That said, he was told by treatment staff that due to his offence he could not progress further from V1 to B2 classification group nor be permitted to attend educational courses or be employed in work activities. The inmate in question had filed several complaints to the prison director, prison administration and judge for the execution of sanction quoting the relevant provisions of the European Prison Rules on the review of sentence plans.<sup>90</sup> The prison director had responded to him that his individual treatment programme had been correctly put in place and re-assessed through the granting of additional parcel and visit benefits but no rehabilitative activities existed within Pavilion VII with the exception of borrowing books from the prison library.

68. In addition, the situation of the rest of the 183 inmates accommodated in Pavilion VII of Požarevac Correctional Institution was also problematic in light of the absence of rehabilitation activities. The prison management was treating their accommodation in prison records as “prolonged placement for security reasons” without any concrete basis in the LECS. This reinforces the perception of Pavilion VII as a self-standing punitive section.

69. The CPT would like to recall that long-term imprisonment can have a number of de-socialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society, to which almost all of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way. The prisoners concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Moreover, they should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans, targeted rehabilitation programmes, and appropriate psychological and social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release. Moreover, the provision of such a regime to life-sentenced prisoners enhances the development of constructive staff/inmate relations and hence reinforces security within the prison.

**The CPT recommends that the Serbian authorities develop a long-term policy vis-à-vis prisoners serving long sentences at Požarevac Correctional Institution in the light of the above remarks. Further, the Committee considers that prisoners accommodated in Pavilion VII of Požarevac Correctional Institution and notably those serving long sentences should not be adversely impacted in their regime progression due to the fact that the prison administration is not able to offer them a satisfactory range of appropriate rehabilitative activities.**

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<sup>89</sup> The inmate in question had a clean disciplinary record.

<sup>90</sup> I.e., Rules 103 and 104 of the European Prison Rules.



70. The staffing complement of treatment staff was adequate at Belgrade District Prison (12 staff members) and Pančevo Correctional Institution (12 staff members). That said, the complement of 15 educators at Požarevac Correctional Institution was clearly insufficient in the light of the workload imposed on them (i.e. a rate one educator per 160 prisoners on average) as well as the poor working conditions afforded to them (the entire staff was sharing one office and five computers were available for nine staff members). By letter received on 23 June 2021, the Serbian authorities informed the Committee of their plans to increase the staffing complement of the treatment department of Požarevac Correctional Institution by ten new posts. **The CPT would like to be informed of the timeline for the recruitment of the ten new treatment staff members at Požarevac Correctional Institution. Further, it recommends that the educators at this prison be provided with adequate working conditions to carry out their tasks professionally.**

#### 4. Special Regime Detention Unit (Požarevac Correctional Institution)

71. In the course of the 2021, the CPT's delegation paid a follow-up visit to the Special Regime Detention Unit at Požarevac Correctional Institution. The self-standing unit consisting of 60 single-occupancy cells<sup>91</sup> accommodated 13 prisoners sentenced for serious organised crimes and or terrorist activities under separate legislation<sup>92</sup> and was staffed by 39 specially trained prison guards.

72. The CPT's delegation did not receive any allegation of misconduct by staff against detainees and inmates spoke positively about the professionalism and positive attitude. Further, contrary to the situation observed at the time of the 2011 periodic visit, inmates were not systematically handcuffed during out-of-cell movement and were not requested to interact with staff in a martial manner.

73. In terms of material conditions, each cell measured 7 m<sup>2</sup> excluding the fully partitioned sanitary annexe consisting of a toilet, wash basin and shower. Cells were equipped with a metal bed, a table fixed to the floor, a plastic chair, a personal locker and a TV and enjoyed good access to natural light and ventilation, and the artificial lighting was sufficient. Further, cells were under CCTV coverage with the exception of the sanitary annex. The entire unit was kept in a good state of hygiene and maintenance.

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<sup>91</sup> The detention unit consisted of a one-floor building with four radial corridors of 15 cells each around staff control room. The unit was surrounded by a wall-perimeter within the prison compound of Požarevac Correctional Institution next to Pavilion VII.

<sup>92</sup> The Special Regime Detention Unit is regulated by the Law on the Execution of Criminal Sanctions of Organized Crimes (LECSOC) and the general regime of the enforcement of prison sentences regulated by the LECS does not apply in this context. In fact, the applicability of the law in question reaches beyond criminal offences of organised crimes. Article 1 of the LECSOC lists a number of criminal offences other than organised crime, specifically: terrorism, genocide, crimes against humanity, war crimes and related acts as well as gross violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

74. As regards the regime, prisoners were granted five hours of out-of-cell activities per day consisting of one hour of outdoor exercise in the unit's courtyard (equipped with means of rest and traction bars) and one hour of access to a sport gym in groups of two. Further, an additional three hours of socialisation were granted to groups of up to three prisoners in a common room equipped with tables, board games, magazines, a TV and video-game consoles.<sup>93</sup> That said, no remunerated activities were offered nor any type of vocational course, educational training or thematic workshops. Inmates were in principle permitted to borrow books from the prison library or to request the possibility to keep a laptop computer in their cells. It is not surprising that individual treatment plans only contained scant and repetitive notes on their progress and standardised goals to be attained.

In order to render a more humane aspect to this regime, **the CPT recommends that steps be taken to ensure that all prisoners subjected to the special regime are provided with a wider range of purposeful activities of a rehabilitative nature such as vocational training, educational courses, art workshops and work.**

75. As concerns contact with the outside world, inmates have right to a visit of one-hour per month with close relatives and other persons. Following the amendments to the Rulebook on House Rules of the Special Regime Detention Unit, visits with close relatives take now place in open conditions without glass screen barrier whereas visits with other persons still take place in closed conditions. Further, the statutory visit entitlements were being increased by the prison director to four visits per months on a regular basis.

The above-mentioned Rulebook also stipulates the entitlement of two telephone calls with first-line relatives of a maximum duration of 15 minutes per month which must be recorded by the prison authorities as well as of one parcel of 10 kilograms per month. Additional phone calls and parcel entitlements as well as extra transfer of money were considered as privileges and there were generally granted by the prison director.

**The CPT recommends that inmates subject to the special regime be granted, as a basic standard, an open visit of one hour per week, any restrictions as to the length or open nature of the visit, such as the use of screens or CCTV surveillance, being based on an individual risk assessment. Further, telephone entitlements should be increased of one telephone call per week.**

76. The infirmary in the special detention was staffed by a nurse on a daily basis and a GP paid weekly visits. Further, inmates in need of specialist treatment were referred to the Belgrade Medical Military Academy and there appeared to be no major impediments to their transfer.

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<sup>93</sup> Article 32 of the LESOC simply states that each prisoner has the right to stay in the open air for a maximum of two hours a day in a group of a maximum five prisoners.

77. Placement in the Special Regime Detention Unit is decided upon by the sentencing court (i.e. Belgrade High Court or Belgrade Appellate Court).<sup>94</sup> The placement is reviewed by the Belgrade High Court every two years based on reports from the treatment staff on the prisoner's behaviour as well as on opinions provided by police, security agencies and prosecutorial authorities. Further, the prisoner can request a review of the placement at any time by the competent judicial authority (i.e. Belgrade Higher Court) and can lodge an appeal against the decision to the Appellate Court. A review of the personal files of prisoners accommodated at the Special Detention Unit revealed that the placement was reviewed within the statutory deadlines and the court decisions were well reasoned and based on the assessment provided by the different authorities. That said, the prisoners were not heard in person by the judicial authorities and the justification for the renewal of the placement of the inmate provided by the security agencies was of a stereotyped nature based on the persistent dangerous profile of the person and his control and influence over current or former affiliates of his criminal gang.

The reasoning of the relevant renewal decisions contained double-negative formulations, with a certain automatism and redundancy such as: "*...it does not appear that the inmate is not in a position to influence the members of his criminal organisation and entourage*".

**The CPT recommends that the renewal of the placement in the special regime be based on an individual risk assessment that provides objective reasons for the continuation of the measure and not merely an absence of information to show that the person in question is no longer linked to a particular organisation. Further, each time a prisoner is subject to a renewal or first-time imposition of the placement in the special regime, he/she should be given the possibility to be heard in person by the competent ministerial authority (possibly through a video-conference system).**

## 5. Health-care services

78. As mentioned in paragraph 46, prison health-care has been identified in the 2021-2027 Strategy as one of the areas in need of the most vigorous structural reforms notably as regards the improvement of conditions in infirmaries at prison establishments, the adoption of a job classification system of health-care posts across the prison administration and the identification of a location for the construction of a new Special Prison Hospital.

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<sup>94</sup> In the case it is established that certain circumstances exist indicating that the sentenced person will continue to direct the activities of an organised criminal gang; conduct cooperation with another criminal group; endanger the personal safety of public officials (e.g. judicial and prosecutorial authorities or other government officials) and induce other persons to commit criminal offences.

At the outset of the visit, the Head of the Prison Administration informed the CPT's delegation that the previous plans of transferring the stewardship for the provision of prison health-care to the Ministry of Health<sup>95</sup> had been abandoned and a new *modus operandi* had been developed between the two Ministries, as evidenced by the successful management of the pandemic in prisons (see paragraph 12). Further, since the CPT's 2015 visit the Serbian authorities had refurbished the infirmaries at Sremska Mitrovica and Niš Correctional Institutions,<sup>96</sup> introduced a centralised procurement and distribution system of medicines and developed (in co-operation with the CoE) a manual for health-care workers in prisons (enabling the harmonisation of treatment and application of uniform records and protocols at all establishments).<sup>97</sup>

i. Staffing levels and resources

79. The health-care staffing complements at the prison establishments visited were adequate and almost all posts filled. Further, the prison administration was funding six medical specialisation programmes for young doctors as an incentive to join the prison service.

At Belgrade District Prison there were six GPs (including a Head of Service), one dentist, 12 nurses (including three dental nurses). Further, a psychiatrist seconded from the adjacent Special Prison Hospital was present on a permanent basis at the establishment. The vacant posts included one GP and two nurses.

At Pančevo Correctional Institution the health-care staffing complement consisted of three GPs (including a Head of Service), 11 nurses, one dentist and one visiting psychiatrist twice a week.

At Požarevac Correctional Institution, there were five GPs (including one Head of Service), one dentist, ten nurses, two pharmacists, one radiographer and one psychiatrist visiting the establishment twice a week.

As regards access to specialised care, Belgrade District Prison and Pančevo Correctional Institution had a well-functioning and longstanding arrangement with the Medical Military Academy for access to imaging and other diagnostic procedures as well as specialist treatment which was largely appreciated by inmates and remand prisoners. At Požarevac Correctional Institution, specific contracts were in place with specialists from the local civil hospital for surgery, pulmonology, dermatology, ophthalmology, internal medicine and physiotherapy services. Further, the CPT's delegation noted positively that the practice of remand prisoners being systematically denied external consultations and treatment by the investigative judge had been discontinued and authorisations would normally be granted by the judicial authorities within five to six days.

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<sup>95</sup> See paragraph 85 of the CPT's report on the 2015 periodic visit to Serbia CPT/Inf (2016) 21.

<sup>96</sup> In response to specific recommendations outlined in paragraph 74 of the CPT's report on the 2015 periodic visit to Serbia CPT/Inf (2016) 21.

<sup>97</sup> The manual in question under the title "Manual for Health-care Staff Workers in Establishments for the Enforcement of Criminal Sanctions" had been developed by a working group of the Ministry of Justice with the input of three CoE experts. The publication covered issues such as screening upon admission, reporting and recording of injuries, treatment and prevention of transmissible diseases in prison, substance use, medical ethics and double loyalty issues. In the annex it included 21 standardised forms to be adopted in prison establishments nationwide in respect of the above-mentioned issues.

80. The infirmary at Pančevo Correctional Institution (consisting of two clinical rooms and three cells) were well resourced with modern equipment and kept in pristine hygienic conditions. At Belgrade District Prison, the infirmary (consisting of two clinical rooms) had been whitewashed since the last visit in 2015. At Požarevac Correctional Institution, the infirmary and health-care premises were in principle well resourced (i.e. ECG/electrocardiogram and cardiology ultrasound machine as well as two defibrillators and an emergency bag containing anti-shock treatment, intravenous cannula and fluids for resuscitation). That said, the dental suit contained antiquated equipment.

81. Medical documentation pertaining to prisoners was generally detailed and well-kept and the standardised forms included in the above-mentioned training manual were in place at each establishment visited. Further, there were plans to digitalise medical documentation throughout the whole prison system.

82. Access to a doctor did not constitute a problem at any of the establishments visited, requests by remand and sentenced prisoners were lodged through a written request (*podnesak*) either to nurses or security staff and was managed electronically in a spreadsheet.

83. The distribution of medication was in principle ensured by nursing staff at Belgrade District Prison and Pančevo Correctional Institution. That said, at Požarevac Correctional Institution, security staff was in charge of the distribution of medication in Pavilion VII and a prisoner was in charge of its distribution to the 24 older prisoners accommodated in “elderly section” of Pavilion V.

The pharmacies in the establishments visited were stocked with an appropriate range of medication. The vast majority of medication required for the treatment of sentenced prisoners was funded by the prison administration and families stepped in to fill the gap when newer-generation medication was required. That said, the delegation received numerous complaints from indigent prisoners and those without families concerning the lack of medicines provided by the prison health-care authorities.

**The Committee recommends that all medication be distributed by health-care staff and that prisoners should under no circumstances perform such a task.**

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

ii. Screening upon admission

84. The CPT’s delegation noted that the quality of medical examinations of newly arrived prisoners and the recording of the injuries they displayed had further improved since the 2017 visit. Remand prisoners were in principle physically examined by health-care staff promptly, in a confidential setting and any injuries observed were generally recorded in a relatively detailed manner, including using body charts and photographs. That said, health-care staff rarely recorded whether the injuries observed were compatible with the allegations of ill-treatment made by the persons examined (see paragraph 17).

The CPT takes note of the improvement in the quality of medical screening of remand prisoners having alleged physical ill-treatment while in police custody and the description of their injuries. **That said, based on its observations the Committee reiterates its recommendation that the record drawn up after the medical screening should always contain:**

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

85. In terms of the transmission of information indicating elements of possible police ill-treatment to the competent judicial and prosecutorial authorities, the CPT's delegation found that the management of prison establishments visited were in general aware of their obligations and were transmitting information to the competent prosecutors. The information transmitted consisted of a brief description of the allegation made by the remand prisoner in question upon admission to the prison as well as the relevant medical documentation consisting of the description of injuries made by the doctor (including body charts and photographs). That said, it appeared to the delegation that not all the relevant information indicating possible elements of police ill-treatment had been transmitted to the prosecutorial authorities at Belgrade District Prison. For example, only case No. i) out of the ones described in paragraph 17 had been transmitted to the competent Belgrade Basic Prosecutor at the time of the 2021 visit.

**The CPT recommends that the prison management of Belgrade District Prison as well as of other prison establishments be reminded of their obligation to inform the competent prosecutorial authorities of all cases of newly admitted prisoners displaying injuries indicative of possible police ill-treatment.**

86. The medical examination of newly admitted prisoners consisted of a physical check and anamnesis which included a questionnaire for the screening of infectious and transmissible diseases (i.e. Tuberculosis, HIV, and Hepatitis C), a risk assessment for the prevention of suicide and self-harming. That said, despite the very high prevalence of people coming into prison with a history of substance misuse (see paragraph 88), routine testing for these possible underlying conditions was not being proactively sought due to financial shortages at the State level. Further, pulmonary radiography for suspect Tuberculosis had also been discontinued at the prison establishments visited.

The CPT is aware that in periods of economic difficulties - such as those encountered today in many countries visited by the CPT - sacrifices have to be made, including in prison establishments. However, regardless of the difficulties faced at any given time, the act of depriving a person of their liberty always entails a duty of care which calls for effective methods of prevention, screening, and treatment. Compliance with this duty by public authorities is all the more important when it is a question of care required to treat life-threatening diseases.

**The CPT recommends that all newly-arrived prisoners within the Serbian penitentiary system are subject to a systematic screening for Tuberculosis and voluntary testing for HIV and Hepatitis B and C within 24 hours of admission.**

iii. Substance use

87. At the establishments visited, prisoners with drug or alcohol withdrawal needs were promptly referred to the Special Prison Hospital and continuation of opioid agonist treatment (OAT) was ensured in respect of those who were registered under a methadone or buprenorphine substitution treatment at the respective community health-care centre prior to their incarceration. The initiation of OAT after incarceration was extremely rare and withdrawal was medically managed with symptomatic relief medication in the vast majority of cases. Further, as it was the case during the 2015 CPT's periodic visit, there was still no comprehensive strategy in place for the provision of assistance to prisoners with drug-related problems. The number of inmates requesting continuation of OAT appeared to be low in comparison to the much bigger dimension of the problem of substance use in Serbian prisons as noted by NPM in its 2019 thematic report on the treatment of substance using prisoners in Serbian prison establishments.<sup>98</sup> For example, at Belgrade District Prison, there were 20 prisoners on OAT versus an assessment of approximately 450 drug using prisoners at the time of their admission according to the anamnesis conducted by health-care staff. At Pančevo and at Požarevac Correctional Institutions, there were only six and 47 prisoners on OAT<sup>99</sup> respectively, compared to an assessment of 124 and 383 estimated drug using prisoners in each establishment.

In practice, the heavy illegal trade of psycho-active substances and its effect on the levels of inter-prisoner violence (see paragraph 53), the number of inmates failing drug-testing and consequently being placed under enhanced supervision (see paragraph 98) indicated that the proportion of substance using prisoners was far higher and remained largely undetected and unaddressed by health-care staff. Clearly, the considerable amount of psycho-active substances seized by security staff in incoming packages and visitors was having little impact on the trade.<sup>100</sup> The creation of drug-free units at Pančevo Correctional Institution and Belgrade District Prison in recent years with elements of psycho-social rehabilitation based on a cognitive-behavioural programme as well as some individual counselling provided by psychiatrists represented only timid measures to address the problem from a multi-faceted perspective. At the time of the visit, there were no permanent group and individual psycho-social rehabilitation programmes on offer nor a clear harm-reduction strategy in place in order to counter this complex phenomenon.<sup>101</sup>

The intention of the Serbian authorities to introduce thematic treatment plans for substance use prisoners is a positive step. That said, the approach towards substance use in prison should be part of a national drugs strategy, and should have as its goals, inter alia: eliminating the supply of drugs into prisons;<sup>102</sup> dealing with drug abuse through identifying and engaging drug misusers, providing them with treatment options and ensuring that there is appropriate throughcare; developing standards, monitoring and research on drug issues; and the provision of staff training and development. Further, the Serbian authorities should introduce harm reduction programmes in prison to reduce the transmission of blood-borne viruses. Full information on the existence of such harm reduction programmes should be given to inmates by health-care staff immediately after committal.

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<sup>98</sup> See in this respect the Thematic Report of the Serbian NPM under the title "[“Monitoring Treatment of Psychoactive Substances’ Addicts in Institutions for the Execution of Criminal Sanctions”](#)" of December 2020.

<sup>99</sup> I.e. three on methadone and three on buprenorphine at Pančevo Correctional Institution and 23 on methadone and 24 on buprenorphine at Požarevac Correctional Institution.

<sup>100</sup> In the period from January 2020 to March 2021 the management of Požarevac Correctional Institution had sent 24 communications to the Požarevac Basic Prosecutor in relation to the seizure of narcotics resulting from the inspection of incoming parcels, search of visitors as well as prison cells.

<sup>101</sup> Because there was no integrated substance misuse component to the prison health-care teams, harm reduction initiatives, including naloxone on release, was also absent.

<sup>102</sup> See in this respect the report from Mr. David Blakey "[“Disrupting the supply of illicit drugs into prisons”](#)"

**The CPT calls upon the Serbian authorities to develop a comprehensive strategy for the provision of assistance to prisoners with drug-related problems (as part of a wider national drugs strategy) in the light of the above remarks as well as relevant publications by renowned international bodies.<sup>103</sup>**

iv. Transmissible diseases

88. As mentioned in paragraph 87, the initial screening of inmates for transmissible diseases was performed through a questionnaire at their first medical examination upon admission and the practice of routine blood tests for blood-borne viruses and lungs radiography for Tuberculosis had been discontinued due to financial shortages.

The figures at the visited establishments indicated that there was a considerable proportion of inmates affected by Hepatitis C (e.g. 152 inmates at Požarevac and 94 inmates at Pančevo Correctional Institution) and a very limited number of HIV positive inmates. In practice, certain bottlenecks existed in the provision of specialised treatment for Hepatitis C and HIV positive prisoners due to the high costs of medication and access to specialist care being subject to a case-by-case assessment by the prison administration and the Belgrade Clinic for Infectious Diseases.<sup>104</sup> Further, no immunisation for Hepatitis B was offered to prisoners which would be important in the light of the high prevalence of Hepatitis C.

**The CPT recommends that the Serbian authorities take steps to ensure the principle of equivalence of care is respect by providing the same level of access to direct anti-viral treatment to prisoners diagnosed with Hepatitis C as that offered in the community. Further, immunisation against Hepatitis B should be provided to inmates across the prison system in the light of the prevalence of substance misuse and history of injecting drug misuse.**

v. Psychiatric care

89. All three establishments visited had a psychiatrist as part of the health-care staff complement, which permitted a prompt diagnosis of mentally ill inmates and a periodic review of the prescribed medication. Further, in case of acute crisis patients were getting prompt access to the services of the Special Prison Hospital. That said, the treatment of inmates affected by mental disorders remains entirely based on pharmacotherapy and there was little if no evidence of psycho-social and targeted rehabilitative activities on offer to inmates affected by mental disorders. **The CPT recommends that the Serbian authorities develop appropriate psycho-social rehabilitative programmes for prisoners affected with mental disorders.**

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commissioned by Phil Wheatley CB, Director General of National Offender Management Service (NOMS) to undertake this work, published on 30 May 2008.

<sup>103</sup> See for example the publication “Mental Health and Drugs in Prison” from the CoE Pompidou Group as well as chapters 13 and 14 of “Prison and Health” by the WHO Regional Office in Europe which contain important suggestions by international experts.

<sup>104</sup> For example, the protocol in question determined the eligibility criteria for patients/prisoners for treatment with pegylated interferon for Hepatitis C.



vi. Medical ethics

90. As mentioned in paragraph 99, the 2019 amendments to the LECS had removed the requirement for health-care staff to issue fit-for-punishment certificates in respect of inmates who had to serve a solitary confinement or a security measure. The Committee takes positive note that the new provision was being applied at the establishments visited and that prison doctors were paying regular visits to inmates placed in solitary confinement or enhanced supervision. The CPT's delegation noted that health-care staff maintained in general an acceptable degree of professional independence vis-à-vis prison staff. That said, health-care staff should not have to conduct mandatory urine testing of inmates upon the order of security staff.

The drug testing of inmates is essentially a non-medical task and making health-care staff carry it out may affect the therapeutic relationship between health-care staff and patients. Health-care staff should therefore not be involved in the collection and testing of urine samples for security purposes (i.e. drug abuse).

**The CPT recommends that the Serbian authorities strictly comply with these principles and promote their implementation in all prison establishments.**

vii. Deaths in prison

91. As noted during previous visits, neither the prison health-care staff nor the prison management received the results of autopsy reports conducted into prison deaths; they only received a medical certificate. More generally, **the Committee recommends that the Serbian authorities institute a practice of carrying out a thorough inquiry into every death of a prisoner, in particular with a view to ascertaining whether there are lessons to be learned as regards working procedures.**

**Further, the CPT reiterates its recommendation that prison management and prison doctors be systematically provided with the conclusions of autopsy reports (or at least information on the cause of death), as well as any results of the judicial investigation into such cases, concerning prisoners who die in custody in prison or in an outside hospital after having been transferred from their establishments. To this effect the Republic Public Prosecutor should issue a mandatory instruction to all basic prosecutions nationwide on the automatic transmission of ordered autopsy reports of inmates to the prison administration.**

6. Other issues

a. prison staff

92. At Belgrade District Prison, 252 custodial officers (out of 259 budgeted positions) were in charge of the supervision of 963 prisoners and complements of 39 and 25 custodial offers were ensuring the supervision of inmates during day and night-time eight-hour shifts respectively.

At Pančevo Correctional Institution, the complement of custodial staff consisted of 166 prison guards who ensured a presence of 25 officers on each shift in charge of the supervision of 369 prisoners. The supervisory work of prison staff was complemented by the sophisticated CCTV system mentioned in paragraph 50.

At Požarevac Correctional Institution, 268 prison guards (out of 299 budgeted positions) were ensuring the supervision of 1,429 inmates (at the high-security Pavilion VII, 17 staff were on duty at each shift while in the rest of the ordinary pavilions two to four custodial officers were in charge of the inmates' supervision at each shift). Further, 39 prison guards were assigned to the Special Regime Detention Unit where they were present at complements of seven members per shift.

93. Following the adoption of a new Rulebook on the operation of the Training and Vocational Training Centre of the Prison Administration in Niš, the Centre (visited by the CPT in 2015) had finally started offering a permanent curriculum for both induction and in-service training of staff which included modules on fundamental rights, inter-personal skills and use of means of restraint. The 2021-2027 Strategy also included a specific target/goal on the enhancement of training activities of staff.

94. At the outset of the visit the CPT's delegation was informed of the intention of the prison administration to establish and create a professional path for a pool of prison managers (this was also included as a strategy goal in the 2021-2027 Strategy). **The CPT would like to receive information from the Serbian authorities on their plans in relation to the professionalisation of prison management staff and the creation of a clear career path as well as hierarchy between the prison administration and prison directors.**

95. In the context of the adoption of the new Strategy, the Committee would also like to stress the importance of the development of constructive relations between staff and inmates, based on the notions of dynamic security<sup>105</sup> and care which could also enhance control and security and render the work of prison officers more rewarding. Therefore, the time is ripe to develop the role of prison officers as integrated players in the provision of purposeful activities, linked to an individualised sentence plan. **The Committee would like to receive the comments of the Serbian authorities over this matter in the light of the above remarks as well as on the recommendation outlined in paragraph 54 above.**

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<sup>105</sup> Dynamic security is the development by staff of positive relationships with prisoners based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners (see Rule 51 of the European Prison Rules and paragraph 18.a of the Recommendation Rec (2003) 23 of the Committee of Ministers of the CoE to member states on the management by prison administrations of life sentence and other long-term prisoners).

b. means of coercion and security measures (OPN)

96. In the course of the 2021 periodic visit the CPT's delegation examined the execution of means of restraint and security and good order measures as foreseen by Articles 142-155 of the LECS.<sup>106</sup> As mentioned in paragraphs 51 and 52, the application of means of restraint (such as e.g. physical force and use of rubber baton) in case of critical events was well documented at all establishments visited and did not appear to be disproportionate in terms of frequency (e.g. at Požarevac Correctional Institution prison staff had resorted to physical force in one case and use of rubber batons four times from January 2019 up to March 2021).

97. The resort to the temporary separation of inmates (*izdvajanje*) and the imposition of enhanced supervision measure (*pojačani nadzor* or OPN) were the most common measures resorted to by the prison management in order to maintain good order in case of incidents such as inter-prisoner violence, self-harming, passive and active resistance to staff orders etc.

The enhanced supervision measure pursuant to Article 151 of the LECS consisted in the placement of an inmate in a disciplinary module in a single or multi-occupancy cell for a period of up to three months through a decision of the prison director upon a proposal of security or treatment staff. The decision could be renewed once for an additional three months. Enhanced supervision had been enforced 13 times at Belgrade District Prison 39 times at Požarevac and in 39 cases Pančevo Correctional Institutions since January 2020. The regime in force consisted of only one hour of daily outdoor exercise with all other treatment activities suspended. The possibility to associate with other inmates from the disciplinary module was maintained as well as sporadic contact with treatment staff. Inmates received a reasoned written decision on their placement which could be appealed to the judge for the execution of sanctions. That said, there was no clarity as to the duration of the measure, the decision simply stated that it could be re-examined within three months or extended for an additional three months.<sup>107</sup>

**The CPT recommends that the Serbian authorities develop a purposeful regime for inmates placed under the measure of enhanced supervision with a view to promote their reintegration into the ordinary regime. Every unit where such a measure is enforced should have a full-time dedicated multi-disciplinary team composed of educators, psychologists and social workers. The team should develop more detailed individual treatment plans for each prisoner and should increase their direct interaction with them through motivational interviews**

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<sup>106</sup> In sum, according to Articles 149 to 155 of the LECS, coercive measures are used against an inmate in order to prevent an escape of the convicted person; physical attack against another person; injury to another person; self-inflicted injuries; causing significant material damage; active and passive resistance of the convicted person. Coercive measures consist of the use of physical force; restraining; isolation; the use of a rubber baton; the use of water hoses; the use of chemical agents and the use of firearms. Special measures consist of removal and temporary seizure of items which are otherwise allowed; placement in a specially secured room without any dangerous objects for a maximum period of 48 hours; placement under increased supervision of an inmate for a renewable period of three months; isolation of an inmate for a maximum of six months; testing for communicable diseases or psychoactive substances. The use of special measures is ordered by the Governor of the Correctional Institution or the person authorised by him/her upon the written proposal, which includes the justification, made by the head of an organisational unit of the Institution. More than one special measure may be used against the convicted person simultaneously.

<sup>107</sup> The measure had been extended for an additional three-month period only in respect of one case since January 2019.

**Further, the CPT recommends that the Serbian authorities ensure that all prisoners placed under a measure of enhanced supervision are provided with clear and prompt information on the duration of their placement. Further, it recommends that all reviews of placement should include a face-to-face meeting between the prisoner and the treatment staff of the prison prior to any recommendation being made to the prison management.**

c. discipline

98. The legal framework regulating the procedural aspects of disciplinary proceedings applicable to inmates and remand prisoners enshrined in Articles 155-177 of the LECS and the Rulebook on Disciplinary Proceedings of Sentenced Prisoners was applied in practice. Inmates suspected of an offence received a disciplinary report, a decision on initiation of proceedings and had the right to call for witnesses and resort to a defence counsel in the course of the hearing in front of the three-member disciplinary commission. The written decisions on the imposition of a disciplinary sanction were well reasoned, countersigned by the inmate and provided information about the avenues to lodge a complaint to the judge for the execution of sanctions.

The resort to disciplinary sanctions was not excessive at any of the visited establishments (e.g. 79 proceedings initiated in 2021 and 339 in the course of 2020 at Požarevac Correctional Institution) and the most common sanction for serious breaches was the suspension of parcels for a period of three months. Solitary confinement for serious breaches of the LECS was rarely imposed and never exceeded seven days.<sup>108</sup>

Article 164 of the LECS lists the minimum requirements for a cell used for solitary confinement in terms of living space, ventilation, furniture and access to natural light. The sanction was served in cells of the same design as ordinary ones, daily outdoor exercise of one hour offered as well as daily medical examination of inmates performed, in accordance with the relevant legislation.

99. At Pančevo Correctional Institution, the CPT's delegation received some allegations from inmates who had been oversleeping during the morning count that they had been informally punished by prison guards with the removal of their mattresses for the rest of the day. **Prison managers should act to ensure that such actions, if true, are ended forthwith and all suspected offences of the prison rules punished using the formal disciplinary procedures.**

100. Pursuant to Article 162 of the LECS, a disciplinary measure of solitary confinement of an inmate cannot exceed 15 days, although it might exceptionally last up to 30 days in case of concurrence of disciplinary offences.

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At Požarevac Correctional Institution it had last been imposed in 2019.

Given the potentially very damaging effects of solitary confinement,<sup>109</sup> the CPT has consistently argued that the maximum period for solitary confinement as a punishment should be no more than 14 days for a given offence, and preferably lower. Further, there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period.<sup>110</sup> If a prisoner has been sentenced to disciplinary confinement for a total of more than 14 days in relation to two or more offences, there should be an interruption at the 14-day stage (i.e. at least two days and preferably several days depending on the individual) during which the prisoner should have the possibility to associate with other persons and participate in activities.<sup>111</sup>

**The CPT reiterates its recommendation that the Serbian authorities reduce the maximum duration of solitary confinement as a disciplinary punishment to 14 days and preferably lower for a single offence.<sup>112</sup>**

d. contact with the outside world

101. The visit entitlements of remand prisoners remained three visits per month of one hour each subject to approval by judicial authorities in open or closed conditions.<sup>113</sup> As regards sentenced prisoners, Article 90 of the LECS stipulates two visits per month of a duration of one hour from relatives up to the fourth degree.<sup>114</sup> Further, sentenced prisoners are also entitled to a three-hour family visit every two months in special facilities which must comply with certain standards of hygiene and amenities for children. Conjugal visits of sentenced prisoners are considered as a benefit to which those classified under the A1 and A2 groups are entitled.

Visits were suspended in April and May 2020 at the time of the outbreak of the Covid-19 pandemic and the possibility to accumulate visit entitlements was introduced. When visits resumed, measures were introduced such as mandatory personal protective equipment for visitors and prisoners, physical distance as well as obligatory negative PCR testing for visitors. Further, in certain establishments such as Pančevo Correctional Institution, the possibility of video-calls was introduced and facilitated by the prison management.

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<sup>109</sup> See for example, paragraph 53 of the 21<sup>st</sup> General Report on the CPT's Activities CPT/Inf (2011) 28.

<sup>110</sup> See Rule 60.6 and its commentary of the revised 2006 European Prison Rules from 1 July 2020 as well as Rules 43 and 44 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

<sup>111</sup> See Rule 60.6 and its commentary of the revised 2006 European Prison Rules from 1 July 2020 as well as Rules 43 and 44 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

<sup>112</sup> See paragraph 56 (b) of the CPT's 21<sup>st</sup> General Report (2010-2011) CPT/Inf (2011) 28.

<sup>113</sup> Judicial authorities usually granted open visits following the filing of the indictment.

<sup>114</sup> Further, the Rulebook on "Treatment, Treatment Programme, Classification of Inmates" provides for extended visiting entitlements in terms of frequency of visits and range of visitors for inmates belonging to the V classification category.

The visiting premises at Belgrade District Prison had been renovated since previous visits and offered a friendly environment to family and visitors as concerns rooms for open visits, family and conjugal visits. The visiting facilities at Pančevo Correctional Institution consisted of a spacious room equipped with tables and chairs, a family room with kitchenette and a children's playground as well as four bedrooms, all of which were kept in pristine conditions. That said, the rooms for open visits and the premises for family visits at Požarevac Correctional Institution were more austere and poorly maintained (with uncollected rubbish scattered around and damaged chairs and tables) and offered no particular amenities for children. The 10 bedrooms for conjugal visits were kept in an adequate state of repair and hygiene.

**The CPT recommends that visit entitlements for sentenced prisoners be increased to at least one hour every week. Further, the room used for open visits at Požarevac Correctional Institution should be kept in an adequate state of repair and hygiene and the family room should be appropriately equipped to cater to the needs of children.**

102. The entitlements of access to telephone for sentenced prisoners consisted of a minimum of four calls per week of a duration of 15 minutes. That said, at certain overcrowded sections such as Pavilion V of Požarevac Correctional Institution, only two telephones were available for 147 inmates which was insufficient to enable prisoners to benefit from their allocation of calls.

As concerns remand prisoners, they are there is still no official entitlement for telephone calls in the law (confirmation of judge). In principle, the practice of granting telephone calls depends on each investigative judge at least until the indictment. The CPT has consistently stated that any decision to prohibit or impose restrictions on a given prisoner's access to a telephone should be based on a substantiated risk of collusion, intimidation or another illegal activity and be for a specified period. If there is a risk of collusion, particular telephone calls can always be monitored. However, the general principle should be to permit regular and frequent access to the telephone.

**The CPT calls upon the Serbian authorities to take the necessary steps, including of a legislative nature, to ensure that remand prisoners are granted regular and frequent access to the telephone. Further, actions should be taken to ensure all sentenced prisoners can benefit from their allotted telephone rights by increasing the provision of telephones available.**

e. complaints procedures

103. Pursuant to Articles 37 and 126 of the LECS remand and sentenced prisoners in Serbian prison establishments are entitled to file requests and/or complaints to the prison management and the prison administration concerning eventual breaches of their rights. Further, following to the 2019 amendments to the LECS they may also lodge complaints to the competent judge for the execution of sanctions as a second instance organ against the administrative decisions of the prison management or in case of breaches of their physical integrity (i.e. request of legal protection).

The CPT's delegation found that prisoners were in general well aware of the above-mentioned avenues of complaint and able to exercise them in practice having access to the necessary forms. Further, complaints were accurately recorded in dedicated registers indicating the subject matter, date and feedback provided to the inmates. The main subject matter of complaints related to benefits, complaints about the provision of specialised health-care and contact with the outside world.

f. inspection procedures

104. Articles 270 to 278 of the LECS regulate the oversight and control of work of the prison administration through the work of a special inspectorate<sup>115</sup> staffed by authorised supervisors who are entitled to talk to prisoners in private and draft a visit report with recommendations to the prison administration.<sup>116</sup>

105. Pursuant to Article 42 of the LECS judges for the execution of sanctions are tasked to visit a prison establishment on a quarterly basis, to talk with inmates and inform them of their rights. Further, judges for the relevant higher court are mandated to visit remand prisoners on a monthly basis. The dedicated registers indicated that the judicial authorities were visiting the relevant prison establishments with the mandatory deadlines. That said, remarks were rarely included in respect of their findings. Inmates told the delegation that that they did not have the possibility to speak in private with the judges during their visits.

The CPT attaches particular importance to regular visits to all prison establishments by a judge for the execution of sanctions with authority to receive - and, if necessary, take action on - prisoners' complaints and to visit the premises. During such visits, the judges concerned should make themselves "visible" to both the prison authorities and staff and the prisoners. They should not limit their activities to seeing prisoners who have expressly requested to meet them but should take the initiative by visiting the establishments' detention areas and entering into contact with inmates.

**The CPT recommends that the Serbian authorities reiterate to supervisory judges the importance of their role as an impartial and independent control of prison practices.**

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<sup>115</sup> According to the Rulebook on the Supervision of the Work of Institutions within the Prison Administration (*Official Gazette of RS*, No. 85/15), the Inspection Department controls the legality and expertise in work at penitentiaries. The Rulebook defines the areas subject to supervision, supervision procedure, authorisations of supervising persons, obligations of the supervised penitentiary and indicators monitored during the supervision procedure.

<sup>116</sup> The Ministry of Health shall supervise the work of the Special Prison Hospital and the Health Services of the Correctional Institutions (LECS, Article 276).

## 7. The Special Prison Hospital in Belgrade

### a. preliminary remarks

106. The delegation carried out a targeted visit to the Special Prison Hospital in Belgrade (“Prison Hospital”) to assess the treatment of psychiatric patients and to see whether there had been any improvements since the CPT’s previous visits in 2011 and 2015.

The Prison Hospital occupied the third and fourth floors and a corridor on the ground floor of the Belgrade District Prison premises. The ground floor accommodated newly admitted patients and those isolated for Covid-19 purposes.<sup>117</sup> On the third floor, Wards C and D were for patients with alcohol and drug addictions, Ward E was for patients with acute psychiatric needs (remand and sentenced persons transferred from other prisons), Ward G for initial psychiatric observation and Ward I for somatic care. On the fourth floor, Wards A and B were for patients undergoing mandatory psychiatric treatment and comprised four blocks (one for women and three for men) and three so-called isolation rooms,<sup>118</sup> each equipped with ten beds.<sup>119</sup>

At the time of the visit, 759 patients were held in the hospital for an official capacity of 638. There were 401 forensic psychiatric patients (including 44 women and two minors), 80 “acute” psychiatric patients (including nine women and one minor), and 18 patients in “forensic expertise” (including five women). Among these 499 psychiatric patients, about 120 were deprived of their legal capacity and were under a measure of guardianship.

### b. ill-treatment

107. The delegation did not receive any allegations of deliberate physical ill-treatment of patients by staff. Most of the patients met spoke positively of the staff. However, allegations of excessive use of force were received in the context of the use of mechanical restraints (see paragraph 125).

108. The findings from the 2021 visit show that inter-patient violence has decreased since the CPT’s 2015 visit, which is to be welcomed. The recent improvements in living conditions is certainly a contributing factor. However, the continuing lack of privacy and overcrowding led to tensions and occasionally to some violence.

The delegation received allegations of threats and physical abuses from patients, including from one minor placed in an “isolation room” with nine adults to keep him “under control”. The risk of violence was further increased by insufficient presence of staff in living areas. **The CPT encourages the authorities to further their efforts in reducing violence among patients at the Prison Hospital notably through the increased presence of staff in wards. Regarding the specific situation of minors – see paragraph 120.**

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<sup>117</sup> The delegation did not visit Wards C and D (which accommodated 270 patients), or Ward I.

<sup>118</sup> In the entire hospital, there were seven collective cells called “isolation rooms” and only one cell used for isolation and fixation.

<sup>119</sup> These isolation rooms were used for quarantine and observation purposes as well as to protect learning disabled patients or patients considered a security risk.



c. material conditions

109. The material conditions have been significantly improved since 2015, including the installation of two lifts (one accessible to wheelchairs and hospital beds), the refurbishment of rooms, replacement of all doors and windows and the creation of an outdoor “park”. The management planned to transform a workshop wing into a unit for female patients (some 80 places in six rooms) by the end of 2021. All the wards visited were relatively well-ventilated (except some bathrooms), adequately heated, and had access to natural light and sufficient artificial lighting. Mattresses were generally in a decent state of repair and patients had their own cupboard or locker.

However, the quality of the refurbishment on the ground and 4<sup>th</sup> floors, notably regarding the sanitary annexes (toilet, sink and shower), was questionable with ventilation insufficient, and some facilities already showing signs of wear and tear. The delegation also noted leaking pipes in the ceiling. Overall, material conditions remained an issue of concern with dilapidated, and sometimes unhygienic, rooms and corridors, notably in the ward for acute patients. Further, the majority of patients continued to use communal bathrooms which were dysfunctional, dilapidated, filthy and smelly. As an illustration, some 90 male forensic patients in Block 4 (for forensic male patients) had to share two bathrooms containing two showers, three small and one large sinks, and two toilets each.

The Hospital continued to be severely overpopulated with 200 patients above its official capacity. Consequently, most of the multiple-occupancy rooms were crowded. For instance, a dormitory measuring 40 m<sup>2</sup> accommodated 10 patients, another of 28 m<sup>2</sup> accommodated eight patients and five women patients were kept in a 12 m<sup>2</sup> room. Rooms were so crammed that beds touched each other. Most of the large rooms had only one small table and an insufficient number of chairs for all the patients to sit at the same time. Patients had to take turns to use the chair during meals or eat while sitting on their bed. They also complained that they did not have enough plates and spoons to eat. Further, the absence of any partition infringed on their privacy.

Patients were not provided with sufficient products, such as toilet paper and soap, to maintain their own hygiene as well as the hygiene of their room; several complained that they were not given enough cleaning products.

**The CPT recommends that urgent measures be taken to reduce the number of patients held at the Prison Hospital and to improve material conditions notably by renovating and expanding the number of sanitary facilities. Each room should be equipped with, at least, a bed, a locker, a chair and a table space for each patient. Preferably, rooms should not accommodate more than four patients together. Patients should be provided with appropriate equipment to eat, maintain their hygiene and keep their room clean.**

110. The Prison Hospital made important efforts to tackle pest infestations including with providing patients with liquid-proof mattresses and creating a special laundry room to clean beddings and mattresses. However, the presence, more or less regularly, of mice, lice and bedbugs remained an issue. **The CPT encourages the authorities to continue their efforts to eradicate vermin at the Prison Hospital.**

111. The Prison Hospital had its own shop (“canteen”), where patients were allowed to buy food, phone cards and sanitary items once a week.

Patients could wear their own clothes and, if indigent, were provided with clothing by the establishment.

112. The CPT welcomes the development of an outdoor “park” located next to the prison parking lot, which was an area of grass and plants and was equipped with benches and protection from rain and sun. The management intended to further develop this area for the patients. The other outdoor exercise yard, situated between two detention buildings, consisted of three areas separated by mesh fences. One of them had a football goal and another a few benches and some fitness equipment, and only one of them had a shelter from the rain and sunshine. The flaking walls, lack of decoration and the absence of any plants made it extremely austere. Indeed, patients called it “the bunker”, an indication the setting discouraged many from going outdoors. This gloomy impression was further exacerbated by construction debris accumulated at the entry to the yard. **The CPT recommends rendering the outdoor yard more welcoming through inter alia painting the walls, planting vegetation if possible and installing equipment for the patients to use as well as ensuring each area of the yard has its own shelter from the rain and sunshine.**

d. activities, medical care and treatment

113. Upon admission, patients were medically checked, and any injuries were recorded, including with pictures. However, the recording of traumatic lesions should be further improved. In this context, **the recommendation formulated in paragraphs 85 and 86 should also be implemented at the Prison Hospital.**

114. Access to one of the outdoor facilities was far from being offered daily to all the patients. It strongly depended on the weather as well as the availability and willingness of staff to offer it. The fact that most of the wards were situated on the third and fourth floors and the yards on the ground floor did not ease the access. Further, when offered, access to outdoor was of irregular duration, often less than one hour especially in autumn and winter. None of the delegation’s interlocutors (staff and patients) could remember the time they were offered two hours during the same day as provided by law. Further, bedridden patients were not taken outdoors. Access to the “park” was only possible after the authorisation of health-care staff and occurred mostly during spring and summer. None of the patients interviewed could remember the last time they had been in the “park”. In response to the delegation’s immediate observation requiring an improved access to outdoor, the Serbian authorities indicated that construction work was completed next to the outdoor yards and around the “park” in April 2021. Further, they stated that “conditions have been created for all patients, whose health condition allows it, to have access to fresh air outdoors, in accordance with the law” and that the envisaged recruitment of 20 new employees “will affect the quality of treatment”.

Access to outdoor is essential for the well-being and the mental health of psychiatric patients and can be considered as a key element in their treatment. **The Committee recommends the Serbian authorities take steps to improve access to fresh air at the Prison Hospital. The aim should be to ensure that all psychiatric patients benefit from unrestricted access to outdoor exercise during the day unless treatment activities require them to be present on the ward. Until this recommendation is implemented, all patients should have access to outdoors, at least daily.**

115. As was the case during the 2015 visit, medical treatment consisted only of pharmacotherapy. The CPT notes with concern that 85% of the patients on Ward E (“acute patients”) had a medicine from the benzodiazepine group in their therapeutic protocol for a prolonged period of time. The Committee recalls the long-term effects of such treatment, including drug dependence as well as the possibility of adverse effects on cognitive function, physical and mental health. **The Committee recommends that the duration of prescription of the most common types of benzodiazepines be limited to the shortest period of time.**

116. Regrettably, there were still no regularly updated individual treatment plans for psychiatric patients. Patients met were only aware of their pharmacological treatment and could not remember if they had an individual plan. Health-care staff confirmed that if drafted, individual plans were done for administrative purposes with standardised objectives without involving the patient or intention to review it periodically. **The CPT urges that an individual treatment plan be drafted for each patient, including the goals of the treatment, the therapeutic means to be used and the staff members responsible. Patients should be involved in the drafting of their treatment plans and the evaluation of their progress, which should be reviewed and updated on a regular basis.**

117. Some patients benefited occasionally from group or individual psychotherapies on an irregular basis. Further, certain activities were maintained, despite the negative impact of the Covid-19 pandemic, particularly for female patients. Patients in Wards A and B had regular access to the occupational corridor where they were offered artistic, handicraft activities as well as some indoor sport (table-tennis, fitness equipment). Further, 15 forensic patients (from Wards A and B) were employed at the Prison Hospital mostly in cleaning activities.

This contrasts with the absence of activities provided to acute and newly arrived patients who spent their days in their room or in their corridor. Acute patients of Ward E did not have a work and occupational therapist, and no such activities took place within this department. As noted during the 2015 visit, there was a complete absence of clocks in the wards. Many patients relied on the television programmes to have an idea of the time, although several rooms were not equipped with a television and the patients therein did not have a clear notion of the time. **The CPT recommends, once again, that further efforts be made to develop the range of psycho-social activities for psychiatric patients; occupational therapy should be an integral part of the rehabilitation programme. Further, wall clocks should be installed on the rooms and wards.**

118. The delegation identified a few patients who were used as caretakers of one or several physically impaired patients notably in collective “isolation rooms”. They were helping others to maintain hygiene or eat but also administrate oral medication in principle under the supervision of nurses. **The CPT recommends that the Prison Hospital ensure that medication is always administrated by trained health-care staff and never by other patients.**

119. At the time of the visit, three minors (two boys and one girl) were held with unrelated adults in different wards in large dormitories with nine adults or in wards of 95 adult men. They were not provided with any specific attention by the staff and received no additional health-care or support.

In response to the delegation's immediate observation requesting the transfer of the minors to appropriate premises and an end to any further placement of minors at the Prison Hospital, the Serbian authorities indicated that one of them has been transferred to another establishment. The two remaining minors were separated from adults. Further, the authorities stated that the recruitment of a pedo-psychiatrist was envisaged to work both at the District Prison and at the Prison Hospital. **The CPT recommends that the Serbian authorities take the necessary measures to ensure that minors are no longer held with adults and be provided with a regime and treatment in line with their age and specific needs at the Prison Hospital.**

120. The issues relating to Covid-19 were appropriately managed at the Prison Hospital. The delegation was informed that almost all staff members had been vaccinated and more than 200 patients, all of whom had volunteered, were being vaccinated at the time of the visit.

At the time of the visit, 16 patients had been tested positive for Covid-19, with mild symptoms, and were being held in quarantine.<sup>120</sup> Newly-arrived patients were also held separately and tested prior to being placed in ordinary wards. Staff wore surgical masks while on duty at the Prison Hospital and patients were provided with masks for when they left their wards.

121. As regards contact with the outside world, patients at the Prison Hospital had not been authorised to receive visits since January 2020 apart from two weeks during the summer 2020. In this context, **the invitation formulated in paragraph 12 should equally apply to Prison Hospital patients.**

122. More than 400 psychiatric patients at the Prison Hospital were under a court measure of compulsory psychiatric treatment. The management and staff indicated that they faced important difficulties in transferring psychiatric patients under measures who no longer required hospitalisation and should be accommodated in less medicalised structures or return in the community.<sup>121</sup> For further issues related to their legal safeguards, see paragraph 147.

123. The CPT notes positively that no disciplinary sanction was applied at the Special Prison Hospital, even though disciplinary rules and procedures described in paragraph 99 were, in principle, applicable.

e. means of restraint

124. The Prison Hospital had made significant efforts to reduce the use of seclusion and fixation and patients were no longer fixated to their own beds in the dormitories.

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<sup>120</sup> Since the beginning of the pandemic, the Prison Hospital recorded one death of a patient of Covid-19-related complications, in an outside clinic.

<sup>121</sup> In their communication received on 23 June 2021, the Serbian authorities stated that they were working to transfer a number of patients to health care and social welfare institutions.

The room dedicated to restraint and seclusion was located on the main corridor of the third floor.<sup>122</sup> The relatively large room, with two beds permanently equipped with belts, had access to natural light, sufficient ventilation and artificial lighting and had a sanitary annexe. The CCTV camera did not function. If two patients had to be restrained at the same time, a screen would reportedly be put up between the beds.

According to the restraints register, which contained some inaccuracies, the use of restraints was frequent - 137 cases in 2020 and 43 cases in the first two and half months of 2021 - and lasted, at times, for extended periods (15 to 16 hours) including overnight with some patients being offered diapers. Fixation was not always permanently and directly monitored, and the measure was occasionally prolonged due to lack of staff. Further, the partition screen between the two beds was not systematically placed when two patients were restrained at the same time including when such measure took place overnight.

Patients were not systematically informed about the reasons for the fixation measure nor provided with a debriefing following its termination and the application of restraint measures was not systematically mentioned in the individual patient files.

Moreover, custodial staff continued to apply means of restraints in the presence of health-care staff, which sometimes led to them using excessive force or applying physical violence to try and control patients such as a slap to the face or even a baton blow. Custodial staff are not trained to work with psychiatric patients and should not be involved in any means of restraint measures.

**125. The CPT recommends that the Serbian authorities ensure that the Prison Hospital revises the written guidelines and practices regarding the application of the use of mechanical restraints according to the below criteria:**

- **the duration of fixation should be for the shortest possible time (usually minutes rather than hours);**
- **fixation should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain those risks; it should never be used or prolonged to compensate for a shortage of trained staff;**
- **patients subject to fixation should receive full information on the reasons for the intervention and be given the opportunity to discuss their experience, during and, in any event, as soon as possible after the end of a period of restraint;**
- **fixation of patients should never take place within the sight of other patients, including if it is another fixated patient, and be under continuous direct monitoring by staff;**
- **restraints should only be applied by adequately trained health-care staff and never by custodial staff.**

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<sup>122</sup>

The “padded” room of the establishment was used for storage and no longer for isolation purposes.

f. staffing

126. At the time of the visit, 13 psychiatrists and doctors specialising in psychiatry and some 80 nurses were employed to care for almost 500 psychiatric patients. The Prison Hospital had 27 staff “in charge of treatment” (psychologists, work and occupational therapists, special educators and social workers).<sup>123</sup> Nevertheless, this number was still insufficient to provide an appropriate and individualised care to all patients, particularly due to the variety of patients to be treated and administrative tasks that staff had to fulfil. **The CPT recommends that the Serbian authorities increase the health-care staff at the Prison Hospital in particular psychiatrists, nurses and work and occupational therapists.**

g. safeguards

127. Upon admission, patients were not provided with a document, such as a brochure, informing them on the applicable rules, their rights, and the functioning of the Prison Hospital.

The delegation was informed that the Prison Hospital had a standardised complaint form that can be placed in complaints mailboxes in each ward. However, patients and some staff interviewed were unaware of the existence of such a form and did not know the purpose of the mailboxes. Moreover, the complaints register was empty. In this context, **the recommendation made in paragraph 153 should also applied at the Prison Hospital.**

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<sup>123</sup> About a hundred custodial staff was in charge of the security at the Prison Hospital.

## C. Psychiatric establishments

### 1. Preliminary remarks

128. In the course of the 2021 visit, the CPT's delegation carried out follow up visits to the Laza Lazarević Psychiatric Clinic and to the Special Hospital for Psychiatric diseases "Dr Slavoljub Bakalović" ("the Bakalović Special Psychiatric Hospital") in Vršac<sup>124</sup>, both of which are under the responsibility of the Ministry of Health.

129. In the period since the 2015 visit, the Laza Lazarević Psychiatric Establishment was transformed from a Special Hospital into a Psychiatric Clinic, accompanied by a drastic decrease of its capacity and the development of outpatient services and day-care. The Psychiatric Clinic has a theoretical capacity of 500 beds divided evenly between two sites: one in Belgrade and one in Padinska Skela, a rural area 25 kilometres away from Belgrade. At the time of the visit, the hospital had 217 patients with 65 on the Belgrade site and 152 in Padinska Skela and it appeared that the number of patients had not exceeded 320 in the previous few years.

With the outbreak of the Covid-19 pandemic, the Belgrade site served primarily as an admission hospital for adults in a state of acute crisis, with patients transferred to the Padinska Skela site after a two-week quarantine period unless they were likely to be released within a month. The hospital no longer admitted adolescents.

The Belgrade site consisted of a three-storey building divided into six units. The two intensive care units (twelve beds each) were situated on the ground floor next to the admission. Patients spent three days on average on the intensive care units before being transferred to one of the four clinical wards.<sup>125</sup>

The Padinska Skela site accommodated patients with repeat admissions as well as longer stay patients and consisted of five wards each of which was located in a two-storey house. There were two acute/clinical wards (one mixed and one male), and three wards for psycho-social care of chronic patients (all mixed).

The management of the Clinic informed the delegation of the plans to fully reconstruct the Belgrade premises and to renovate the Padinska Skela site. To this end, the CPT trusts that its standards and comments set out below regarding the living conditions for psychiatric patients will be taken fully into account.

130. The Bakalović Special Psychiatric Hospital is situated on the outskirts of Vršac in a vast park and with 900 beds, it is one of the largest civil psychiatric institutions in the country. The hospital is composed of 17 wards, each housed in an individual one-storey unit, and it has both open and closed wards.

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<sup>124</sup> The CPT visited the Laza Lazarević Hospital in 2004 and 2011 and the Bakalović Special Psychiatric Hospital in 2015.

<sup>125</sup> Wards K and M for men and Wards L and F for women. In addition, the Clinic had a ward dedicated to psychiatric patients with Covid-19 related symptoms.

At the time of the visit, the hospital was accommodating 619 male and female patients, of whom, 123 patients were under a forensic measure, including for substance abuses, and nine had a civil court measure including one minor (17 years old).<sup>126</sup> The delegation primarily visited those closed wards accommodating forensic, acute, chronic, and geriatric psychiatric patients.

## 2. Ill-treatment

131. Most patients met in both hospitals spoke positively about the staff. However, the delegation did receive a few allegations of physical ill-treatment by staff of patients on the intensive care units at Laza Lazarević Psychiatric Clinic and on a few wards of Bakalović Special Psychiatric Hospital. The alleged ill-treatment consisted mainly of pushes and slaps by staff while attempting to maintain order on the units. A few allegations of verbal abuse, including insults connected with sexual orientation, were also received at the Belgrade site of the Laza Lazarević Psychiatric Clinic concerning health-care staff.

On the other hand, the CPT notes with satisfaction that inter-patient violence and intimidation did not appear to be a major issue. Generally, the atmosphere encountered was calm, which is positive and represents a significant improvement on the situation found during the 2015 visit to the Bakalović Special Psychiatric Hospital. Whenever quarrels and occasional physical altercations among patients flared up, staff generally dealt with them rapidly (see however paragraph 142 regarding staffing).

**The CPT recommends that the Serbian authorities ensure that further efforts be made to prevent any forms of ill-treatment, whether physical or verbal, of patients by staff at both hospitals. This should include ensuring that there are sufficient staff on the wards and that the staff are properly trained in managing difficult situations. Further, all cases of use of force should be fully documented and management should be vigilant in their oversight duties.**

## 3. Patients' living conditions

132. Recent renovations combined with the decrease in the number of patients accommodated at the Laza Lazarević Psychiatric Clinic resulted in patients being offered decent living conditions at both sites. Rooms were clean, well-ventilated and had good access to natural light and sufficient artificial lighting, and they were suitably furnished with cupboards and bedside tables. The sanitary facilities were also in an acceptable state of repair but the rooms felt cramped as most of the floor space was taken up by beds (up to 12 beds in intensive care or eight in *M-Ward*), leaving little space for patients to move around.<sup>127</sup> The CPT considers that no more than four patients should be accommodated in the same room in a hospital setting in order to offer an appropriate therapeutic environment and decent living conditions. Moreover, in the sanitary facilities, showers were not systematically equipped with a partition nor toilets with doors, even in mix gender wards, which infringes patients' privacy as well as their dignity.

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<sup>126</sup> Accommodated in P-Ward (acute male patients) based on a civilian court order.

<sup>127</sup> The fact that efforts had been made to use every second bed in the rooms during the Covid-19 pandemic did not provide additional space for the patients as the unused beds remained in the rooms.



At the Bakalović Special Psychiatric Hospital, the material conditions found varied greatly across the wards. It is positive that “O-ward”, which the CPT had heavily criticised in its report on the 2015 visit, has been closed. At the time of the 2021 visit, a few Wards such as N (neurology) and G (psycho-geriatric) offered satisfactory living conditions with rooms recently renovated,<sup>128</sup> corridors appropriately decorated, and sanitary facilities in a good state of repair. Wards B, L and Z were also in decent conditions, offering a good and caring atmosphere. On the other hand, Wards C, F and P were austere and dilapidated; rooms with up to eight beds were relatively clean but crowded, decrepit and without necessary furniture such as bedtables and chairs. The sanitary annexes in these wards were in a state of neglect and filthy: broken showers or missing shower heads meant patients had to wash with a hose, floors were damaged and unhygienic, toilets broken and emitting a foul odour. Further, most of the showers and toilets in these wards were not equipped with a partition or a door.<sup>129</sup>

**The CPT recommends that the Serbian authorities take steps at Laza Lazarević Psychiatric Clinic and Bakalović Special Psychiatric Hospital to ensure that each patient has, at least, a bedside table and a chair as well as offer more living space for patients in large dormitories.**

**Urgent measures should be taken to maintain a decent level of cleanliness in all bathrooms and renovate sanitary facilities in Wards C, F and P at Bakalović Special Psychiatric Hospital as well as to equip showers with a partition and toilets with doors at Laza Lazarević Psychiatric Clinic.**

133. The Belgrade site of the Psychiatric Clinic did not have an outdoor area for patients as an inner yard with benches and a green area was neither accessible nor secured for patients. Further, a shelter from the rain or sun needs to be installed in this yard and several others in the large park at the Padinska Skela site and the Bakalović Special Psychiatric Hospital so that patients may enjoy access to fresh air every day. Several wards at Bakalović Special Psychiatric Hospital had a nice and secured small yard attached to the building equipped with the above-mentioned elements as well as with, sometimes, a therapeutic dog or a basketball hoop.

**The CPT recommends that an outdoor area accessible to patients be provided at the Belgrade site of the Psychiatric Clinic and that outdoor areas at both hospitals be equipped with shelters against the rain and sun.**

134. There was little in the way of personalisation of the living space at either hospital. Rooms were rather sterile, lacking personal decoration or items, including in chronic wards. Patients could not personalise their rooms and were frequently transferred from one room to another at Laza Lazarević Psychiatric Clinic (Padinska Skela site), even though they may have been in the institution for some months or even years. A number of patients in both hospitals did not have a proper locker in which to keep their personal belongings, despite the efforts made, notably at Bakalović Special Psychiatric Hospital in this regard. More generally, accommodating patients in large rooms with up to nine other persons, often without curtains or blinds on the windows, denied them the possibility of having any privacy from other patients and the patients also felt exposed to the outside world.

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<sup>128</sup> Rooms were suitably furnished, with good access to natural and artificial light.

<sup>129</sup> In their communication received on 23 June 2021, the Serbian authorities stated that some changes were made in Ward P following the visit.

**The CPT recommends that steps be taken at both psychiatric hospitals to enable long-term patients to personalise their environment and to provide them with a modicum of privacy, including providing each patient with his/her own lockable space for personal belongings and installing curtains/blinds on the windows.**

**The Committee also recommends that patients not be frequently transferred from one room to another as a routine measure given that such a practice may be a cause for distress and hinder a patient's progress.**

135. The CPT's delegation found that patients at the Belgrade site of the Laza Lazarević Psychiatric Clinic were obliged to wear pyjamas day and night during their stay in the hospital. Several of them complained that wearing pyjamas prevented them from developing a normal routine or to "get better". The CPT has always considered the practice of continuously dressing patients in pyjamas not to be conducive to strengthening personal identity and self-esteem and that individualisation of clothing should form part of the therapeutic process. **The practice of forcing patients to wear pyjamas should therefore be abolished. The CPT recommends that patients at the Laza Lazarević Belgrade site be allowed to wear their own clothes. Even patients who prefer to wear pyjamas should be encouraged to change into other clothes during the day to preserve a sense of normal routine which contributes to a therapeutic environment.**

#### **4. Admission, treatment and care**

136. According to the records, 20 patients were admitted at the Bakalović Special Psychiatric Hospital before 2000 (the longest staying in 1974), while almost 19% were admitted in 2021. The delegation was informed that the average length of stay at Laza Lazarević Psychiatric Clinic was 34 days with a maximum stay of three years.<sup>130</sup> However, it emerged that the Clinic had developed the practice of administratively readmitting all the voluntary patients every six months including those present in the establishment for more than a decade<sup>131</sup> with the aim of artificially lowering the average length of stay. Consequently, the delegation could not gain a clear picture of length of stay in the establishment. **The CPT would like to receive the comments of the Serbian authorities regarding this practice.**

137. Both establishments had a good admission protocol which included collecting personal data and a medical history as well as a decent screening of traumatic lesions (see however paragraph 142 regarding the presence of police officers).

An individual treatment plan was drafted for each patient upon admission. Treatment plans consulted by the delegation at the Laza Lazarević Psychiatric Clinic resembled checklists with pre-drafted text predominantly focused on the planned pharmacotherapy schedule. They appeared to be drafted merely for formalistic purposes. Efforts were made at the Bakalović Special Psychiatric Hospital to have a multidisciplinary approach and to tailor the formatted text to some of the needs of the patient. Treatment plans were only occasionally revised at both hospitals.

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<sup>130</sup> In 2019, 2,930 persons were hospitalised with an official average of 35 days and there were 1,565 persons in 2020 with an average of 34 days.

<sup>131</sup> At least two patients had been present at the Padinska Skela site since its opening in 2005.

To be effective, treatment plans should be individualised and take into account the patient's needs, strengths, desires and capacities, indication of treatment goals, therapeutic means used and the staff member(s) responsible. It should be regularly reviewed with the active participation of the patient to assess the treatment, the progress made and the objectives to be achieved. **The CPT recommends, once again, that the Serbian authorities put in place a more individualised approach towards patients' treatment plans, in line with the above remarks.**

138. The pharmacotherapy provided to patients was of a good standard at both hospitals.<sup>132</sup> The CPT welcomes the fact that the medical staff at the Bakalović Special Psychiatric Hospital had managed to phase out the use of benzodiazepines as a permanent therapy. This contrasted with the situation found at the Laza Lazarević Psychiatric Clinic (Padinska Skela) where 84 out of 152 patients had it in their therapeutic protocol. **The recommendation formulated in paragraph 116 regarding the use of benzodiazepines should also apply in this context.**

139. Prior to the Covid-19 pandemic, patients at both hospitals were offered a range of therapeutic activities both of an occupational (handicraft and artistic activities as well as sports) and psychosocial nature. However, due to the pandemic, the number of activities had been drastically reduced with the therapeutic centres closed at both hospitals.<sup>133</sup> Only a limited number of activities (mostly of psychosocial nature) were taking place in small groups within the wards, usually a couple of time per week - organised by psychotherapists or educators. At the Bakalović Special Psychiatric Hospital, a few patients were also responsible for the maintenance of their ward or for taking care of a therapeutic dog. Nevertheless, the vast majority of patients had had no structured psycho-social rehabilitation programme for many months. Not surprisingly, patients stated that they were bored. Such a situation is particularly regrettable having in mind the staffing levels at the Laza Lazarević Psychiatric Clinic (see paragraph 142).

**The CPT recommends that measures are taken, at both hospitals, to develop a range of therapeutic options and involve long-term patients in rehabilitative psycho-social activities daily, in order to prepare them for independent life or return to their families; occupational therapy should be an integral part of the rehabilitation programme, providing for motivation, development of learning and relationship skills, acquisition of specific competences and improvement of self-image. As far as possible, this should happen in coordination with the existing community care structures.**

140. As concerns recreational activities, the main and sometimes only activity was to watch television or to play board games in the wards' common rooms. In *Ward M* at the Belgrade site, Covid-19 restrictions prevented patients gathering in the common rooms which meant they did not have access to a television or board games.

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<sup>132</sup> A large spectrum of medications was available including most of the second-generation antipsychotics. Medical files were well-kept and documented.

<sup>133</sup> At the Padinska Skela site, the therapeutic ward reopened on the day of the delegation's visit but closed again few days later when the delegation returned to the establishment.

Patients at the Belgrade site had no access to fresh air. In their communication received on 23 June 2021, the Serbian authorities stated that these patients were prevented from outdoor exercise due to “epidemiological isolation”. At the Padinska Skela site and Bakalović Special Psychiatric Hospital, patients could, officially walk daily in the wooded grounds or in the secure gardens (in Bakalović). In practice, access to fresh air was organised on an irregular basis when weather permitted, and staff was available. Consequently, patients at both hospitals spent their days smoking, watching television, walking around in their corridor, or sleeping.

**The CPT recommends that, at both hospitals, steps be taken to ensure that all patients have regular daily access to suitably equipped recreation rooms and to improve access to fresh air. The aim should be to ensure that all psychiatric patients benefit from unrestricted access to outdoor exercise during the day unless treatment activities require them to be present on the ward. Patients should be proactively encouraged to use the gardens and outside areas.**

## 5. Staff

141. The CPT welcomes the fact that patients were exclusively dealt with by trained health-care staff, no security staff worked in the premises of both establishments.

The Laza Lazarević Psychiatric Clinic employed 513 full-time equivalent (FTE) staff, including 80 doctors,<sup>134</sup> 269 nurses, 25 health-care associates (such as psychologists and occupational therapists), and three pharmacists. Since the beginning of the pandemic in March 2020, about a hundred health-care staff, including eight doctors, had been seconded to support other health institutions. The staff present at the time of the visit was more than sufficient in number. By contrast, at Bakalović Special Psychiatric Hospital, there were 396 staff including 56 doctors (24 psychiatrists), 240 nurses, and 13 health-care associates, a moderate increase from the 2015 visit.<sup>135</sup> Although all the positions were filled, the management considered that the institution further needed more staff notably nurses, social workers and occupational therapists and had made an official request to the Ministry of Health in this regard. The lack of staff prevented the establishment from opening a newly renovated ward of 30 beds for Alzheimer patients.

The CPT also considers that the number of nurses and health-care associates was insufficient to provide appropriate care even for the current 619 patients at the Bakalović Special Psychiatric Hospital. As it was the case in 2015, the insufficient levels of staff impacted the quality of care. The permanent presence of health-care staff on the wards, sometimes limited to one or two nurses, was insufficient to guarantee the functioning of the wards while at the same time providing appropriate care and attention to patients with special needs or at risk of self-harm. Deficiencies in staff resources seriously undermine attempts to offer activities; further, they can lead to high-risk situations for patients, notwithstanding the good intentions and genuine efforts of the staff on duty. Further, staff was not equipped with an automatic alarm call system to call for back-up. The lack of staff was particularly problematic in wards for patients with somatic care needs (for example bedridden or dependent patients).

Police occasionally escorted newly arrived patients inside both hospitals, remained present during the admission procedure and was, if necessary, assisting health-care staff in case of agitation of the patient including by using hand or ankle-cuffed and immobilisation techniques. Medical or personal records of the patients did not included information on this issue.

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<sup>134</sup> Including 60 psychiatrists, 7 neuropsychiatrists and one child-psychiatrist and 3 general practitioners.

<sup>135</sup> At the time of the 2015 visit, the establishment had 46 doctors, 215 nurses and 13 health-care associates.

**The Committee recommends that the Serbian authorities take the necessary steps at the Bakalović Special Psychiatric Hospital to increase staff numbers in order to ensure a greater presence of nurses and auxiliary staff on the wards and that a call for reinforcement system be developed. Further, the CPT invites the authorities to provide sufficient health-care staff to deal with agitated patients upon admission. Police forces should generally not enter hospital premises.**

142. Since the 2015 visit to Bakalović Special Psychiatric Hospital, the management had initiated staff training, notably on risk management and de-escalation with the objective of limiting the resort to the use of force and means of restraints as well as improving the recording of such measures. While welcoming this initiative, it is essential to further this initiative as several health-care staff interviewed did not attend these trainings or could not remember them. More generally, staff at both establishments indicated that training possibilities were extremely limited even prior to the Covid-19 pandemic. Several nurses stated that they had been “trained” by their colleagues over the last couple of years including on the use of means of restraint. **The CPT recommends that the Serbian authorities invest more resources into the provision of initial and ongoing training for staff including in relation to interpersonal skills and communication.**

## **6. Means of restraint**

143. The applicable norms regarding seclusion and other means of restraint described in the 2015 visit report remain unchanged.<sup>136</sup> In this context, it is regrettable that the release of a patient from a measure of mechanical restraint remains the exclusive competence of a doctor. The CPT considers that fixation should be terminated as soon as it is no longer necessary, and that nurses should also have the authority to end the measure. **The Committee recommends, once again, that the Serbian authorities amend the policy that requires a doctor's authorisation to release a patient from a measure of mechanical restraint.**

144. Each of the wards of the Bakalović Special Psychiatric Hospital and of the Padinska Skela site had a dedicated room for seclusion and fixation, usually located next to the staff room. However, patients were occasionally fixated to their own bed, in multiple-occupancy rooms, in both establishments. At the Belgrade site too in the absence of a seclusion/restraint room, patients were restrained to their own bed in front of other patients (up to 11 persons) as observed by the delegation during its visit to this unit. The CPT considers that restraining a patient in view of others is undignified, potentially unsafe and may be threatening to other patients.

Fixation to a bed was usually applied for relatively short periods of time and occasionally for period lasting several hours, including overnight. However, the delegation did not get an accurate overview of the use of means of restraint in the absence a centralised register in each hospital. It is worrying that the registers on the use of mechanical restraints of the Psychiatric Clinic did not record the frequent application of restraints for periods more than two hours, and at times overnight. Consequently, the management of the hospital had no overview of the use of mechanical restraint in the establishment and nor could any external body obtain an accurate picture about its use.

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<sup>136</sup> Notably in accordance with the Rulebook on fixation and the bylaw of the Law on Protection of Persons with Mental Disorders. For further description, see CPT/Inf (2016) 21, paragraphs 166 and 167.

At both establishments, patients subject to fixation were regularly checked by staff – usually every 15 minutes – but they were not subject to a continuous personal supervision by staff. Patients stated that they were not explained the reasons for the application of the measure nor provided with a debriefing,<sup>137</sup> and several of them felt that fixation was imposed on them as a punishment.

**The CPT recommends that the Psychiatric Clinic and the Bakalović Special Psychiatric Hospital review their formal written guidelines and practices regarding the use of mechanical restraint according to the following criteria:**

- **the duration of fixation should be for the shortest possible time usually minutes rather than hours;**
- **fixation should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain those risks; it should never be used or prolonged to compensate for a shortage of trained staff or applied as a punishment;**
- **patients subject to fixation should receive full information on the reasons for the intervention and be given the opportunity to discuss their experience, during and, in any event, as soon as possible after the end of a period of restraint through a debriefing;**
- **each use of means of restraint should be systematically and accurately recorded in a dedicated register as well as in the individual file of the patient.**

**Further, fixation of patients should never take place within the sight of other patients and should be under continuous direct monitoring by staff. The practice of restraining patients in dormitories should be stopped immediately and measures be taken to use a dedicated room at the Belgrade site of the Psychiatric Clinic.**

145. The establishments visited did not have a specific policy or records regarding the use of seclusion even though it was applied, notably in relation to Covid-19 or, rarely, with the aim to calm down patients. Such measures were implemented in fixation or individual rooms. It did not appear that there was an established practice of regular supervision or human contact by staff. **The CPT recommends the authorities to ensure that every use of seclusion be recorded in a dedicated register, that appropriate human contact and individualised staff supervision be provided and that a basic regime be applied notably with a daily access to fresh air.**

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Once means of restraint have been removed, it is essential that a debriefing of the patient take place. For the doctor, this will provide an opportunity to explain the rationale behind the measure, and thus reduce the psychological trauma of the experience as well as restore the doctor-patient relationship. For the patient, such a debriefing is an occasion to explain his/her emotions prior to the restraint, which may improve both the patient's own and the staff's understanding of his/her behaviour. The patient and staff together can try to find alternative means for the patient to maintain control over himself/herself, thereby possibly preventing future eruptions of violence and subsequent restraint.

## 7. Safeguards in the context of involuntary placement

146. The legal framework for involuntary psychiatric hospitalisation and treatment has remained unchanged since the 2015 visit both for civil and forensic patients.

As regards the legal safeguards for forensic patients undergoing compulsory psychiatric treatment and placement order by a criminal court,<sup>138</sup> mandatory treatment of such patients remained unlimited in time. The psychiatric establishments reported regularly on the mental health of the patient to the court that imposed the security measures. Neither the establishment nor the patients or their representatives were informed of the decision taken following this reporting procedure. The patient, the guardian and the psychiatric establishment could also submit, every six months, a motion for discontinuance of the measure. If the court refused to grant the release, the applicant had three days to appeal before the Supreme Court of Serbia.

It appeared from the information gathered and consultations with the hospital management that placement was no longer justified for medical reasons for some 150 patients, including 50 with learning difficulties, at Belgrade Prison Hospital and for several of the 123 forensic patients at Bakalović Special Psychiatric Hospital. The courts disregarded the opinion of the treating psychiatrists and refused to release forensic patients, notably on non-medical grounds such as the lack of an outside support structure, the refusal of the family to accommodate the patient or even if the patient did not possess an identity card. Further, requiring patients to pay for a court expertise from non-treating doctors acted as an impediment to obtaining independent medical evidence for the measure to be ended. Moreover, the appeal procedure and its restrictive three-day time-limit undermined the practical effectiveness of the safeguard. Incredibly, at the Prison Hospital the delegation found that patients were left without any judicial review of their situation for many years and in seven cases for periods of 25 to 32 years.<sup>139</sup> Such a state of affairs in a country governed by the rule of law and committed to safeguarding the rights of all persons in its jurisdiction cannot be allowed to continue. It is not surprising that both patients and staff believed that patients could be subjected to indefinite placement.

**The CPT recommends that Serbian authorities take immediate steps to introduce an automatic court review, at reasonable intervals (e.g. every 12 months), of every compulsory placement of a forensic psychiatric patient. The patients and/or their lawyer should be allowed to be present during the review hearing. Further, all court related documents should be communicated to patients and efforts should be made to facilitate access to an independent psychiatric expertise.**

**The Committee also recommends that the Serbian authorities ensure that the appeal procedure is both easily accessible and effective in addressing patient's concerns.**

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<sup>138</sup> In application of the Criminal Code, the CCP and the LECS. For further analysis, see paragraph 97 of the 2015 CPT's report, CPT/inf (2016) 21.

<sup>139</sup> In the 12 oldest cases consulted at the Prison Hospital, with admissions dated between 1989 and 1996, seven files did not contain any review decision, three files contained one review decision, one file had two court decisions and one file had four.

147. The 2013 Law on the Protection of Persons with Mental Disorders<sup>140</sup> provides for a 24-hour time limit for submitting requests for involuntary hospitalisation to the courts. For the patients officially considered as involuntary, the delegation found that this was correctly applied by the internal *Concilium* (council) of the hospitals visited. Judges came regularly to the hospital for the initial hearing of the patient and the hospitals reported regularly to the court on the health of the involuntary placed patient. The court may extend the compulsory hospitalisation for up to six months and patients may be assisted by a lawyer at their own expense.

Regrettably, the shortcomings identified during the 2015 visit had not been remedied. The delegation noted that there was still no independent external medical expert involved in the involuntary psychiatric hospitalisation procedure and that the court continued to rely on an expert opinion provided by one of the hospital's doctors, even if the doctor was not the treating one. The CPT considers that the procedure for ordering involuntary placement should offer guarantees of independence and impartiality as well as of objective medical expertise. It should therefore be based on the opinion of a psychiatrist external to the hospital. Further, involuntary psychiatric patients were not provided with copies of the court decisions and were unaware of the legal remedies available, which rendered their right of appeal ineffective in practice.

**The Committee calls upon the Serbian authorities to ensure that continuation of the initial involuntary placement requires the opinion of an independent psychiatrist – external to the hospital.**

**Further, every patient who is the subject of an involuntary placement measure should be systematically informed of the recommendations of the psychiatric/medical councils and of the court decisions, be provided with copies of these documents and explained their meaning as well as of the legal remedies available to challenge them.**

148. Most of the patients at Bakalović Special Psychiatric Hospital and almost all the patients at Laza Lazarević Psychiatric Clinic were hospitalised on a “voluntary” placement procedure, including in acute wards. Delegation interlocutors agreed that most patients were *de facto* involuntary, as they could not freely leave the establishment. Moreover, patients deprived of their legal capacity were considered as voluntary given that their legal representatives had given their consent to the placement. Patients officially gave their consent to hospitalisation and treatment by signing a form on admission which was kept in their medical records. The consent forms did not include information regarding their rights, notably to leave the establishment whenever they wanted and no information on this issue was displayed in the wards' corridors. Health-care staff admitted that patients were considered as voluntary even though they signed the voluntary admission form in a state of agitation or in an acute condition. For example, one patient was considered a “voluntary” admission at the Belgrade Psychiatric Clinic even though he had signed the admission form while intoxicated, suffering from hallucinations and expressing suicidal intentions as documented in his medical records.

Consent to treatment was included with the admission form and patients were not informed that they could refuse a treatment or withdraw their consent to it at any time.

**The CPT recommends, for the third time, that steps be taken to ensure that psychiatric patients, and the guardians of legally incompetent patients, are provided with full, clear, and accurate information before consenting to hospitalisation.**

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<sup>140</sup> Official Gazette of the Republic of Serbia, No. 45/2013.



**Consent to hospitalisation and consent to treatment are two distinct issues and patients should be requested to express their position on both issues separately.**

149. Patients did not have the possibility to give their free and informed consent to treatment as they, or their guardians, were requested to sign the consent to hospitalisation and treatment at the same time without being informed. Patients were under the impression that if they refused their treatment, they would receive it through an injection.

The CPT considers that psychiatric patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment as well as to withdraw it at any time. Every patient, whether voluntary or involuntary, should be informed about the intended treatment. Further, every patient capable of discernment should be given the opportunity to refuse treatment or any other medical intervention.

Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances. The relevant legislation should require an external psychiatric opinion (i.e. outside that of the treatment team) in any case where a patient does not agree with the treatment proposed. Patients should be able to appeal against a compulsory treatment decision to an independent outside authority and should be informed in writing of this right.

**The CPT recommends that the Serbian authorities ensure that the above-mentioned precepts are effectively implemented in practice. If necessary, the relevant legal provisions should be amended.**

150. As was the case during previous CPT visits, patients and their family and guardian, were not provided with a document (brochure or leaflet) informing them about the establishment and on their rights, including information on procedures and complaint bodies (see also paragraph 153 regarding complaint procedure). Upon admission in their wards, they were informed orally and sometimes in writing of the functioning of the ward and the timetable of the day. **The CPT encourages the authorities to improve the information provided to patients regarding the functioning of the establishment and their rights both orally and in writing. The Committee would like to receive a copy of these documents.**

## **8. Contact with the outside world, complaints procedure and de-institutionalisation**

151. Regarding contact with the outside world, patients at both hospitals had not received visits for more than a year due to Covid-19 restrictions. The Bakalović Special Psychiatric Hospital allowed certain forensic patients to continue to have weekend leaves as long as they quarantined upon their return. Most of the patients, including forensic patients, were also allowed to use their mobile phones in addition to the phones available in the establishment. A similar approach was undertaken at the Padinska Skela site. Patients at the Belgrade site or those who were not allowed to access their mobile phone could only make and receive calls on the ward telephone during a one-hour period every day. Several patients complained about these restrictions and staff acknowledged it was a problem. In the CPT's view, restricting access to mobile phone should be based on an individual risk assessment.

**The CPT encourages the management of the Bakalović Special Psychiatric Hospital and the Laza Lazarević Psychiatric Clinic to further develop the possibilities for patients to maintain contacts with the outside world notably by increasing the possibilities of using the telephone. Further, the CPT would like to be informed when visits by relatives and other persons to patients were resumed.**

152. The management at both hospitals indicated that they reacted orally or in writing to complaints received from patients or their family (addressed directly to them, or to the lawyers or the social workers of the establishment), including through phone calls or those sent to the Ministry of Health. Patients had the possibility of addressing complaint to external bodies such as the Protector of citizen's rights, judicial authorities or the Ombudsman's office.<sup>141</sup> Each ward, in both establishments, had a box for requests, complaints and praise although at the Padinska Skela site it was not located inside the wards thus preventing patients from having ready access to it. The delegation found that the boxes were not emptied regularly, and that staff were not aware of the procedure to follow if a complaint was found or if a patient complained orally. Moreover, staff and patients were not fully aware of the available complaint procedure, to whom complaints should be addressed and who was competent to deal with them. No relevant and reasonably detailed information in writing to whom and how to file a complaint was seen in the wards. To be effective, a complaint system requires that it be known by all stakeholders and for complaints to be dealt promptly and with care and consideration by the establishment.

In the CPT's view, an internal complaints system should ensure that patients are able to make confidential written complaints at any moment for example by placing them in a locked box designed for this purpose (to which only the establishment's Director and/or a designated delegate has the key), located in each accommodation unit. Patients should receive, within a reasonable time, written acknowledgement of every complaint they make and reasoned answers in writing to written complaints (feedback on the outcome of their complaints in a timely manner). Further, a proper record should be maintained of every complaint and the hospital authorities should use complaints to help improve their practice within a clinical governance framework. Moreover, patients and their families and representatives as well as staff should be fully informed about the complaint procedures.

**The CPT recommends that the Serbian authorities take steps to ensure that every psychiatric hospital has a clear and effective complaints procedure in place and that patients and their families and representatives as well as staff are fully informed about it.**

153. Regrettably, modest progress has been made since 2015 in speeding up the concrete implementation of the strategy for de-institutionalisation, which should include establishing sustainable effective services in the community. Despite the efforts noted at both establishments to transfer patients to community care or to limit re-hospitalisations, far too many patients continued to be hospitalised even when there was no medical justification to keep them in a hospital setting. The systematic extensions of placement were in large part due to a lack of alternatives being available in the community. The delegation was informed that five mental health centres were opened in different regions, but their continued viability was placed at risk due to a lack of resources. Further, the delegation was informed that the national strategy "Mental Health Protection Programme" was not provided with sufficient funds to be implemented at local level.

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<sup>141</sup> At Bakalovic Special Psychiatric Hospital, a Patients' Council, composed of patients from different wards, met regularly with the staff prior to the pandemic.

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

**The CPT would also like to receive precise information regarding the allocated budget for the implementation of the strategy “Mental Health Protection Programme” and on the concrete measures to be implemented in 2021 and 2022.**

## D. Social care institutions

### 1. Preliminary remarks

154. The CPT visited, for the first time, the Home for mentally impaired adults in Kulina (“Kulina Home”) and the Home for Children and Youth “Duško Radović” in Niš (“Radović Home”), both institutions under the responsibility of the Ministry of Labour, Employment, Veteran and Social Affairs.

155. Kulina Home, located in the countryside, 27 km outside Aleksinac in southern Serbia, is composed of six residential pavilions. Five pavilions: central, D (with *D1* and *D2* Wards), *Women 1* and a building with *Men 1* and *Women 2* Wards are all sited next to one another in a closed park and the “*Pink*” Pavilion, for more autonomous residents, is located 100 m away next to the Home’s farm. There is also a separate building with several educational rooms, a kitchen and a dining room, a health-care centre, outdoor sports and recreation areas, as well as a building for administrative and technical purposes.

Established in 1953, Kulina Home was initially an institution for children with disabilities. In 2012, the Serbian authorities transferred the residents under 18 to five Small Group Homes, smaller and more adapted premises and transformed the Home into an establishment accommodating only male and female adults with light to severe learning and physical disabilities. At the time of the visit, there were 159 men and 135 women (total: 294) residents aged between 20 and 85 years, 60% of them being bedridden or having severe mobility impairment.<sup>142</sup> The administrative capacity of the Home was of 504 places; considering the conditions and the staffing levels described below this official capacity cannot be seen as suitable.

156. Established in 1996, Radović Home is situated in a school campus in Niš. The three-storey establishment hosts different categories of population divided into three units: “street children”, children in residential protection and a *Small Group Home* (SGH) – “Malodmska” community –, for children and adults with mental and physical disabilities.<sup>143</sup> At the time of the visit, there were 10 residents at the SGH, including three women, aged between 18 and 36 years. One resident was bedridden, and others were in wheelchair. As indicated above, the Radović SGH was created to move residents who were minors from Kulina Home to smaller-scale type homes with the aim of providing more individualised care and better living conditions. All the SGH residents at Radović Home apart from one had been transferred from Kulina Home in 2012.

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<sup>142</sup> Only 86 residents had arrived in the establishment since the beginning of 2000, with the longest being present since the opening in 1953 and 16 others for longer than 40 years.

<sup>143</sup> The delegation focused on the Small Group Home.

157. Since 2012, the number of residents at Kulina Home has decreased by almost 30% and yet it remained well above the ceiling of 100 places provided for by national regulation for adult social care institutions. The decrease in the population was merely due to the number of deaths exceeding the number of admissions rather than as a result of any policy. According to the management, although the home should officially stop admitting new residents, the national authorities continue to issue exemptions requiring the home to take new residents. No resident had left the home since 2016 even though several were considered able to live far more autonomously and others were motivated to get prepared. The lack of appropriate structures to accommodate them meant they had to remain at the home.

158. Clearly, further efforts are required to ensure that the de-institutionalisation process becomes a reality. In 2020, there were 4 956 adults accommodated in an institution for persons with disabilities throughout the country which represents only a decrease of 4% since 2018. The obstacles identified in the report on the CPT's 2015 visit remain unchanged, notably as regards the need to reorganise the social care system and the insufficient number of structures to care for persons with disabilities or of adequate solutions in the community.

A draft law on protection of the rights of residents of temporary residential services in social care homes and a draft strategy on deinstitutionalisation (2021-2026) are currently being discussed by the Government. According to the information available, the draft legislation focuses on institutions rather than on the persons concerned and their rights. The draft strategy seems to emphasise on the transformation of institutions, which is an important first step. However, it remains imprecise on key issues such as the organisation and the funding of community-based services or on banning the creation of new structures of institutionalisation, notably for children.

159. Further, the fact that certain existing institutions such as Kulina Home are hardly accessible due to poor road conditions and the absence of public transportation<sup>144</sup> should encourage the authorities to close them down as soon as possible in order to have residents, and staff, living closer to the community. Large-capacity establishments entail major risks of institutionalisation for both residents and staff which have adverse effects on the care provided. Life in large institutions, far from ordinary household structures and daily life occupations have a counter-therapeutic, depersonalising effect on residents, and infringe on their privacy. The aim should be to ensure that no room accommodates more than four residents, and preferably with individual accommodation in small-capacity institutions.

Community social care options, when necessary associated with mental health-care, can not only shorten or avoid institutional stays and reduce the potential for ill-treatment/violence between residents, but also improve experiences and proper re-integration into the community. Such community accommodation should consist of small group home living units in the community, ideally in towns, with all the relevant facilities close at hand and not larger units situated on the grounds of long-standing social care establishments (which do not allow genuine de-institutionalisation and proper re-integration into the community).

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<sup>144</sup>

Kulina Home operated their own bus services daily for staff and had two ambulances for its residents.

The CPT recommends, once again, that the Serbian authorities step up their efforts to reorganise the system for provision of care to persons with mental disabilities, in the light of the above remarks. It would also like to receive an outline of the plans to de-institutionalise residents from Kulina Home as well as other large institutions in the country.

The Committee must stress in this context that the various comments and recommendations in the following sections concerning the Kulina Home are made without prejudice to the overarching imperative that the institution be taken out of service as soon as appropriate smaller structures can be made available for the current residents.

## 2. Ill-treatment

160. The delegation received no allegations, and found no other indications, of deliberate ill-treatment of residents by staff at both establishments. On the contrary, many residents spoke positively about staff. The delegation observed a caring attitude by staff towards residents who knew them well.

Very few instances of violence between residents occurred, only at Kulina Home,<sup>145</sup> and staff appeared to react immediately and appropriately.

However, as set out below, the poor material conditions combined with the absence of activities or access to outdoor fresh air for a large number of patients at Kulina Home and the low staffing levels could lead to situations amounting to inhuman and degrading treatment contrary to Article 3 of the European Convention of Human Rights.

## 3. Living conditions

161. Living conditions at Radović Home were of a decent standard and pleasant, with home-like furniture, personal belongings and pictures in the resident's bedrooms, curtains on large windows and appropriate artificial lighting. The establishment had three triple rooms and one individual bedroom. The activity/living room, connected with a dining room, was equipped with a television and a computer. The collective bathroom was adapted to the needs of people in wheelchairs. Further efforts could be made to have a more individualised approach particularly by accommodating all residents in their own individual bedroom and allowing them to watch television or use the computer on their own.

162. At Kulina Home, living conditions varied greatly from one ward to another. On a positive note, most wards were relatively clean and had adequate access to natural light and sufficient ventilation. Bedrooms accommodated between three and ten residents, with most bedrooms for seven or eight persons. Important renovations totalling almost 4 million euros were carried out over the past five years, notably with the reconstruction of the *Pink Pavilion* and the *Women I Ward*.<sup>146</sup> Both wards offered a generally good state of repair with several activity rooms and recently painted walls but also showed signs of wear and tear particularly in bathrooms.

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<sup>145</sup> One injury was recorded in 2021 due to violence between residents and four in 2018, 2019 and 2020.

<sup>146</sup> The Home also had new equipment installed such as CCTV, centralised boiler, medical equipment, central kitchen (where up to 1000 meals can be prepared daily) and an industrial laundry room.

Despite the efforts of the staff to maintain them clean, Wards *D1*, *D2* and *Central* were in relatively poor material conditions with outdated furniture and decoration. Conditions were unacceptable in *Women 2* and even worse in *Men 1* Wards. In both wards, rooms were only equipped with old beds and worn mattresses, no bedside table or storage space for personal belongings; had dilapidated or childish paintings on the walls,<sup>147</sup> gloomy or dysfunctional neon lighting and no curtains on most windows. In addition, *Men 1* Ward had crumbling walls with damaged or falling tiles, including in bedrooms next to beds, and a number of broken floor tiles. It should be noted that damaged wall and floor surfaces pose a serious risk of injury or self-harm to residents. It also had a foul smell due to the conditions of the sanitary annex.

Wards were not equipped to properly care for persons with motricity impairment, notably to assist them getting out of bed or to safely and painlessly manipulate bedridden residents. None of the bathrooms had appropriate size and equipment for bedridden residents or for those with severe mobility impairment. Further, the material conditions of the sanitary annexes were poor in most wards (broken toilet doors or lack of showerheads) and unacceptable in *Women 2* and *Men 1* Wards. In these last two wards, showers were broken including the tray or only equipped with a hose and floor-level toilets were dirty and unhygienic, and not all of them had a door or a functioning flush system. Further, artificial lighting was not functioning in the sanitary facilities on *Men 1* Ward since a rodent had gnawed the electrical cables.

Even if the establishment was not operating at its official capacity, almost all the beds were occupied, and the rooms crowded. As an illustration, two rooms of 28 m<sup>2</sup> in *Women 1* Ward were accommodating seven and eight residents respectively with most of the floor space taken up by the beds which left very little moving space for residents. In the CPT's view, no room should accommodate more than four residents, which would effectively render the rooms in *Women 1* Ward and in other wards more spacious. Except for some attempts in *D2* Ward, little was done to personalise the rooms of the residents or to enhance the decoration in the wards.

163. Important reconstruction plans had been officially postponed at both homes due to the Covid-19 pandemic. At Radović Home, it was intended to transfer the SGH residents to another floor and to facilitate their access to the outdoor area. The Kulina Home management indicated that *Women 2* and *Men 1* Wards, the two oldest and most problematic wards, were due to be renovated in the 2021. Answering the delegation's request for information, the Serbian authorities indicated that the competent Ministry "has established cooperation with the Office for Public Investment Management [...] in order to finance and implement the [renovations] in Woman 2 and Male 1 Wards, as a priority". Further, funds were allocated to equip "appropriate bathroom equipment for users who are immobile and users with the most severe mobile impairment". However, the authorities could not precise when the construction work will be carried out.

**The CPT recommends that the Serbian authorities take steps at Kulina Home to improve the living conditions by:**

- **enhancing the sanitary annexes and providing hygienic conditions, material in a good state of repair and accessible to all residents including those in need of assistance or bed-ridden;**
- **offering more living space for residents in the rooms and reducing occupancy in any one room to no more than four residents;**

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<sup>147</sup> Dating back from the time the Home accommodated children.

- providing residents with a locker and space to store their belongings in their room or ward;
- offering possibilities for residents to personalise their living environment.

As regards the living conditions in Women 2 and Men 1 Wards, including the sanitary facilities, the CPT would like to be informed within three months of the action being taken to renovate these wards to a decent standard of hygiene, state of repair and furnishings.

Lastly, the Committee would like to be informed of steps taken to implement the reconstruction plans at Kulina and Radović Homes.

#### 4. Treatment and care

164. Each resident had a treatment and rehabilitation plan drafted by a multidisciplinary team<sup>148</sup> based on his/her psycho-physical abilities which was, at Kulina Home, revised at least once a year and transmitted to the guardian as an “annual report on the beneficiary”. In addition, monthly plans for individual and group work/activities were set up. At Radović Home, most of the individualised plans consulted, which were of good quality, were last revised in 2019. Further, residents at neither home were involved in the drafting or the revision of their plans. **The CPT invites the authorities to ensure that individual plans are regularly revised, at least every year, with the participation of the resident concerned.**

165. Efforts were made, at both establishments, to maintain a regime with a structured programme. Psychomotor and occupational activities were organised in accordance with the psychophysical abilities and wishes of the residents. At Radović Home, education was a key element of the activity programme with nine residents attending school including four in secondary curricula. Due to the Covid-19 pandemic, residents were no longer physically attending school but received regularly home-work by e-mail. Further, some activities were organised daily by caregivers or occupational therapists.

An occupational therapist intervened daily, sometimes including weekend, in each ward at Kulina Home, except in *Women 2* where regrettably no such intervention occurred. Basic occupational activities took places in wards’ activity rooms and most mobile residents had also the opportunity to have activities in the occupational ward in small groups. Residents of the *Pink* Pavilion had further activities including drama and sport classes. Overall, 169 residents (out of 294) were involved in some type of occupation activities at least few hours per week. Nevertheless, despite the considerable efforts of the staff, only a basic group programme without any individualised approach was available to most residents. Residents with the most severe disabilities benefitted from hardly any regime apart from watching television or being gathered in a dayroom room with others. Further, residents in *Pink* Ward were also forced to eat rapidly their meal due to the limited capacity of the dining room. The delegation also noted that most residents required assistance with eating but, with current staffing levels, the priority was to get the feeding process carried out as hastily as possible, which was stressful for residents and did not allow them to eat with dignity and enjoy the meal. Such a state affairs should be remedied as a matter of priority.

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<sup>148</sup>

Composed notably of a psychologist, a social worker, a special education teacher and an occupational therapist.



**The CPT recommends that measures be taken to ensure that all residents have daily access to an individualised programme of rehabilitative activities with a view to improving the quality of life, as well as resocialisation programmes preparing residents for more independent living.**

**Measures should be urgently taken to ensure that assisting residents with eating is carried out in a respectful manner.**

166. Neither Homes possessed a secure outdoor area allowing residents to have access to fresh air regularly. At Kulina Home, only *Women 1* and *Men 1* and *Pink Wards* had a ramp to access outdoor. Recreative areas, which had benches but no rain protection, except in *Women 1*, were distant from the different pavilions and unsecured especially for persons with mobility impairment. In any case, only the most mobile residents were going outside regularly for activities or meals. For the others, which represented some 60% of the residents, they were not accessing any outdoor area at any time, also due to the limited capacity of lifts.

At Radović Home, the Small Group Home was located on the second floor with no direct access to outdoors. Residents had to use an elevator to get outside and several could not move without assistance. The staff acknowledged that access to outdoors was made an irregular basis and seen as an “extraordinary activity” specially in Covid-19 time.

**The CPT recommends that the Serbian authorities take the necessary steps to ensure that all residents in Kulina and Radović Homes have an unlimited access to fresh air, in a reasonably spacious and secured setting at least equipped with means of rest and protection against the inclement weather. In this context, particular efforts should be made to assist residents with physical impairments.**

**Until this recommendation is implemented, all residents should have access to outdoors, at least daily.**

167. Regarding somatic care, a thorough medical check was performed for each newly admitted resident at both establishments.<sup>149</sup> Since the beginning of the Covid-19 pandemic, a negative PCR test was also required upon admission to social care facilities. Further, both establishments worked closely with local hospitals and medical specialists to provide residents with a good preventive medicine and medical care comparable to the one offered in the community.

168. As regards psychotropic medication, residents did not appear to be over-sedated at either home. However, most of the Kulina Home residents received several antipsychotic medications in combination with tranquilisers and mood stabilizers. For instance, one resident was taking up to 17 different types of medication everyday including six psychotropic medicines.<sup>150</sup> In another case, a resident was taking daily three antiepileptics, one anxiolytic and three antipsychotics.

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<sup>149</sup> The medical check consisted notably of blood and urine analysis, bacterial/parasites tests, lungs X-ray, as well as reports from general practitioner, an internist and neuropsychiatrist regarding the physical and mental conditions of the person.

<sup>150</sup> Haloperidol, Chlorpromazine, Bromazepam, Carbamazepine, Biperiden, Donepezil and Hydrochloride.

Further, 157 residents had benzodiazepines as part of their regular therapy and 20 were still prescribed first generation anti-psychotic depot medication. The number and the type of medications prescribed seemed to be both excessive, medically inappropriate; this polypharmacy practice could be detrimental to their health. In the CPT's opinion, psychoactive medication should only be given to residents who have been diagnosed with a mental disorder.

**The CPT recommends that the medication prescribed at Kulina Home be reviewed to limit their numbers and the risks of side effects. The recommendations formulated in paragraph 116 regarding benzodiazepines should also apply in this context.**

## **5. Staff**

169. The Kulina Home employed 204 full-time equivalent staff members including five doctors (one psychiatrist, three general practitioners, and one internal medicine specialist), 36 nurses, two physiotherapists and three speech-therapists. The institution also employed two social workers, one psychologist, three special educators, three instructors and 11 occupational therapists as well as 75 caregivers. Employees met by the delegation appeared dedicated and cared for "their" residents. The work was organised to provide a continuous care and a certain regime as well as to permit a multidisciplinary approach. However, staffing levels were clearly insufficient, notably as regards orderlies and occupational therapists, which meant that individual care for bedridden residents was inadequate and challenging moments in the daily routine such as nights or mealtimes could not be properly managed.

At the Radović Home, there were 25 staff members in total. Six caregivers worked exclusively for the Small Group Home, seven educators intervened at the SGH as well as at the unit for children in residential protection. No health-care staff, nurse or doctor, was directly employed by the home. The number of educators was insufficient to ensure a daily presence on the ward and to provide a fully individualised care to the residents. The Home would also require the presence of a nurse on a regular basis to ensure continuous health-care monitoring and a proper management of the residents' medical documentation and treatment plans.

**The Committee recommends that the Serbian authorities take steps to increase the staffing levels at both homes, in the light of the above remarks. In particular, the number of occupational therapists and caregivers should be increased at both Homes to provide with a more individualised care and a nurse should be present on a regular basis at Radović Home.**

## **6. Means of restraint**

170. Neither home possessed a seclusion room but, at Kulina Home, an agitated or anxious resident could exceptionally be isolated temporarily either in a sensory room or in an empty room. The resident was always under direct staff supervision and the measure was recorded on a dedicated form and placed in the individual file of the resident and in a specific register. Further, the CPT notes positively that the use of means of mechanical restraint was not an issue of concern at either institution. The use of a belt fixation was ordered by doctors, and recorded on a special form, for a few residents for the time spent in wheelchair at Kulina Home with the purpose of preventing falls and self-injuries. The measure was applied under direct supervision of a caregiver.

Each institution developed its own internal guidelines regarding restraint measures, which had been reviewed and approved by the Ministry of Labour, Employment, Veteran and Social Affairs. However, there is no centralised approach or protocol regulating the use of means of restraint nor any legal basis for their application in social care homes.

The regulation on the use of means of restraint should contain the following rules and safeguards (see also paragraph 145 regarding the use of restraints in the psychiatric context):

- every use of means of restraint is apply only as a measure of last resort, ordered by a doctor or immediately brought to the attention of a doctor with a view to seeking his/her approval<sup>151</sup>;
- use of means of restraint is recorded in the resident's individual file and in a dedicated register;
- means of restraint are not applied, in principle, to a resident in sight of others;
- fixated resident is under continuous and direct monitoring of staff;
- restraint is never applied, or prolonged, as a punishment;
- restraint is removed at the earliest opportunity;
- the exceptional prolongation of restraint requires a further review by a doctor;
- the resident concerned is given the opportunity to discuss his/her experience, during and, in any event, as soon as possible after the end of a period of restraint.

**The CPT recommends that the Serbian authorities regulate the use of restraints in social care homes through providing a clear legal basis and adopting common guidelines, taking into account the above remarks.**

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

171. The rules and procedures relating to the deprivation of legal capacity and the appointment of a guardian remained unchanged since the 2015 visit.

172. Residents may leave Kulina facility only accompanied by a staff member or an authorised person (such as a family member or their legal representative), it was also the case for most residents at Radović Home.

Placement in social care institution was decided by a Centre for Social Welfare (CSW) following a request by the residents' relatives, the legal guardian, or another social care establishment and after the assessment of an expert team from the CSW. The placement decision was unlimited in its duration and there was no obligation of a regular review. Residents were never formally involved in the placement procedure nor notified about the decision, as at the time of the placement they were all under guardianship. The legislation also provided that the placement can be imposed by a court, but it did not envisage a regular review.

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<sup>151</sup> In this context, pre-authorisation protocol (PRN) should be avoided.

The CPT continues to consider that placing legally incompetent persons in a specialised institution based solely on the request of the guardian deprives such persons of essential procedural safeguards. A placement is considered “voluntary” even if it goes against the expressed will of the resident. Many cases of the placement in the two Homes visited could be considered as a *de facto* deprivation of liberty. Some residents were opposed to their placement and even the homes considered that some of the residents should be placed elsewhere.

**The Committee recommends that the Serbian authorities ensure that placement decisions in social welfare institutions be subjected to regular court reviews. Further, all decisions to place a person in a specialised home against her/his will should be automatically notified to the competent court –with a view to seeking the court’s approval and the person concerned should have the possibility of challenging the lawfulness of the placement.**

173. At the time of the visit, 250 of the 294 residents at Kulina Home and 9 of the 10 residents at Radović Home had been placed under guardianship, with the majority of them having a CSW employee as guardian.<sup>152</sup> The guardianship decision was taken by a court without involving the person concerned and was not subject to periodic review. As it was the case during previous visits, residents under the custody of CSW employees had hardly any contact with them; some of them did not even know who their guardians were.

**The CPT reiterates its recommendation that the Serbian authorities take measures to ensure that:**

- **all persons who are the subject of proceedings with a view to being deprived of their legal capacity are systematically heard in person by the court, given a copy of the court decision and informed, verbally and in writing, of the possibility and modalities for appealing against a decision to deprive them of their legal capacity as well as have effective access to legal assistance throughout the procedure,**
- **the relevant legislation be amended to ensure that all decisions on deprivation of legal capacity are subjected to a regular court review and can be challenged by the person concerned.**

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

174. Residents were not provided with an information brochure upon admission at both Homes and were not explained the house rules, the residents’ rights or the avenues of complaint in a language or a manner adapted to their learning capacities. Such information was neither provided to their guardian and relatives.

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<sup>152</sup> 167 at Kulina Home and six at Radović Home.

Further, the establishments visited did not have an effective internal complaints mechanism accessible to residents and their representatives. **The CPT encourages the authorities to ensure that residents, and their guardian and family, are adequately informed about the functioning of the Home, their rights and their possibilities to complaints. An effective complaints procedure should be put in place at Kulina and Radović Homes and complaints addressed to the establishment's administration be recorded in a specific register.**

## **APPENDIX I**

### **List of the establishments visited by the CPT's delegation**

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

- Metropolitan Police Headquarters, 29<sup>th</sup> November Street, Belgrade
- Savski Venac Police Station, Belgrade
- Voždovac Police Station, Belgrade
- Zvezdara Police Station, Belgrade
- Požarevac Police Administration
- Niš Medijana Police Station

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

- Belgrade District Prison including the Special Prison Hospital and the separate Special Pre-trial Detention in Ustanička Street
- Pančevo Penal Correctional Institution
- Požarevac Zabela Penal Correctional Institution

#### **Establishments under the responsibility of the Ministry of Health**

- Laza Lazarević Psychiatric Clinic, Belgrade and Padinska Skela sites
- Slavoljub Bakalović Special Psychiatric Hospital in Vršac

#### **Establishments under the responsibility of the Ministry of Labour, Employment, Veterans and Social Affairs**

- Home for mentally impaired adults in Kulina
- Home for Children and Youth "Duško Radović" in Niš

## **APPENDIX II**

### **List of the national authorities, other bodies and non-governmental organisations with which the CPT's delegation held consultations**

#### **A. National authorities**

##### **Ministry of Labour, Employment, Veteran and Social Affairs**

Biljana Zekavica	Acting Assistant Minister for Social Protection
Vesna Miroslavljević	Head of the Department for Systemic Issues, Normative and Legal Affairs in the field of Social Protection
Ana Vukmirović	Inspector for Social Protection
Danka Čančarević	Junior advisor, Sector for International Cooperation, EU integration and Projects

##### **Ministry of Interior**

Vladimir Rebić	Director of Police
Dejan Kovačević	Assistant Minister and Head of the Sector of the Internal Control of the Ministry of Interior
Milivoj Nedimović	President of the Commission for the Implementation of Standards of Police Treatment in the Field of Torture Prevention
Nebojša Pantelić	Assistant Head of the Internal Control Sector
Marko Kovačević	Head of the Department for International Cooperation, Sector for International Cooperation, European Affairs and Planning,

##### **Ministry of Justice**

Dejan Carević	Director of the Administration for the Enforcement of Criminal Sanctions of the Ministry of Justice
Aleksandra Stepanović	Head of the Department for Protection of the Rights of Persons Deprived of Liberty
Milan Tanasković	Head of the Department for Material and Financial Affairs

##### **Ministry of Health**

Jelena Janković	Assistant Minister for Health
Miljan Perić	Advisor

##### **Ministry for Human and Minority Rights and Social Dialogue**

Vladimir Šoć	Advisor
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#### **B. Protector of Citizens**

Jelena Stojanović	Deputy Protector of Citizens
Dr Nataša Tanjević	Head of the National Preventive Mechanism (NPM)

**C. Non-governmental Organisations**

Belgrade Centre for Human Rights (BCHR)

Lawyers' Committee for Human Rights (YUKOM)

Mental Disability Rights Initiative of Serbia (MDRI-S)

International Aid Network (IAN)