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**REPRESENTATION IN DISCIPLINARY PROCEDURES- RESULTS OF
AND RESULTS OF ANALYSIS**

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Contents

REPRESENTATION IN DISCIPLINARY PROCEDURES- RESULTS OF AND RESULTS OF ANALYSIS

-Introductory explanations.....	3
A/ Short overview of incidents in individual cases, based on prisoners' statements, in which force was used against prisoners.....	3
B/ Representation in disciplinary procedures	7
B1- Course of disciplinary procedure.....	7
B2- Legal analysis.....	12
B3 – Sanctions in disciplinary proceedings.....	14
B4- Analysis of gathered information in relation to selected target group– potential victims of torture and inhumane treatment.....	15
C/ Disciplinary reports against officers.....	15
D/ APPENDIX: Individual cases, Legal analyses.....	16
E/ APPENDIX: Disciplinary Commissions` decisions.....	19
F/ APPENDIX: Solitary confinement of prisoners (translated parts of the report)	
21st General Report of the CPT/ Solitary confinement of prisoners/ disciplinary sanction (www.cpt.coe.int/en/docsannual.htm).....	30
Conclusion.....	33
G/ Recapitulation, conclusion.....	34

Introductory explanation

During one year of realization of activities, legal aid was provided to prisoners, potential victims and/or victims of torture and/or inhumane treatment in disciplinary procedures initiated against them and are related to the incidents where physical force was used by Security Service.

Target group were prisoners serving prison sentence in Penitentiary Niš, with one control case related to a prisoner serving sentence in Penitentiary Sremska Mitrovica.

Basic activity during realization of the project was provision of legal aid in form of representation in disciplinary procedures initiated against prisoners. Besides defense in disciplinary procedure, as an additional activity appears submission of reports against Penitentiary officers for whom there was a grounded suspicion that they had exceeded the powers for the use of physical force, or tortured or inhumanely treated the prisoners.

In the observed period, representation covered seven prisoners who contacted the CHRNis and signed the authorization for the lawyer of the Center. Out of these seven cases, five relate to acting of Security Service in Penitentiary Niš, one to acting in Penitentiary Sremska Mitrovica and one to Security Service of District Prison in Vranje.

A. Short overview of incidents in individual cases, based on prisoners' statements, in which force was used against prisoners

- Those represented in disciplinary procedure –

1. I.V., Personal Identification Number 8258, Penitentiary Niš

On 25.01.2011. when going out for a walk, together with other three prisoners, prisoner V.I., as he personally stated, clumsily fell, slipped on the ice and fell at which occasion he had a light injury. Then he swore aloud, but not the commander who took him out for a walk, nor anyone else, but the ice and his own clumsiness. He pointed out that there was no reason to curse anyone because the guilt for the fell was exclusively his.

At that moment, because of the fell and swearing, three officers of Security service took him to another yard. This is where commander Đ. insulted him, slapped him and hit him with a night stick and there were two more commanders who the prisoner did not want to name. He said that there were also three more prisoners present when the incident happened, he named them and said they were ready to testify about that in disciplinary procedure.

Based on prisoner's statement, after the use of force and hitting with official night stick by the commander Đ., he was not taken to medical examination to the prison doctor.

2. B.T., Personal Identification Number 9084, Penitentiary Sremska Mitrovica

According to the statement of prisoner, on 21.03.2011. around 21.30, there was a verbal dispute among several prisoners in a TV room. He participated in that dispute as well. The situation calmed down after several minutes.

Then 4-5 members of Security service entered the TV room and randomly singled out B.T. and few more prisoners ordering them to go to the so-called discipline part on the ground floor of the building. Then they lined them up, with their faces against the wall and arms on their back. Then they brought them in the room not "covered" by cameras, one by one and they were led by the commander M.B., called "Rumeni".

Prisoner M.P. was brought in before B.T. and he heard that they were slapping him. When they brought B.T. in they put on the gloves they use at regular search of prisoners. Tables in the room were spaced so that there would be more space. They ordered him to put his arms on the back and they started to provoke him verbally: "You are going to solve the problems here?"

Then one of the commanders strongly pushed him with hands into breasts that he fell and all three commanders started to beat him with nightsticks. He covered head with hands but they continued to beat him. At one moment they fell over him as they swung. He lost consciousness for two times and they were bringing him back with water and continued with beating. Then they hand cuffed him on his back and beat him with a big wooden stick, similar to baseball one and pulled him tied on the floor, telling him all the time "What's up now? Are you a rowdy now?"

He told them that he suffered from Hepatitis C, hernia and kidney stones and to stop beating him, to better kill him but they continued with the beating all over his body and genitals. They set him against the wall out of the room, called him ``animal`` and other humiliating names. Then, he finally fainted.

Commanders called a prisoner known as "Prika" as well as Ž.A., who took him in a blanket to the hospital because he was so beaten that he could not stand on his feet. He had visible bruises on his thighs (inner side and on his back), wrist bone on the right arm was fractured.

They refused to take him to x-ray, the doctor only roughly examined him. Supervisor from the first building, as soon as he saw how the prisoner looked like, took him back to the hospital for x-ray examination, but the doctor refused to do so.

Prisoner was on a hunger strike for 10 days because of this incident. The Head of Penitentiary received him on 04.04.2011. and told him that he was not a doctor and that he did not understand anything from the area of medicine. At the moment when the lawyer first met the prisoner, two weeks after the incident, the prisoner still had visible bruises.

3. D.M., Personal Identification Number 7425, Penitentiary Niš

According to the statements by the prisoner, in the night between 21.08.2011. and 22.08.2011. around 01:35 several members of Security Service entered the room in which D.M. was with two more prisoners, based on the call of one of two prisoners who were in the room with D.M. He reported that D.M. slapped him.

Then, at least three members of Security Service started to beat D.M. with their official nightsticks on legs, arms and back. After that they required him to sign the statement that he

refused the order to stand up from the bed and that Security Service members hit him for two times, trying to fight down his resistance.

The guards took him to the doctor's at his own request, but according to D.M., the doctor registered in his medical file only a few hematomas on his back, not all the other injuries, which he gained during the incident.

4. A.M., Personal Identification Number 8937, Penitentiary Niš

The prisoner was in the Prison Hospital due to mental problems. On 10.11.2011. around 22.30. during the broadcast of basketball match Partizan - Real Madrid, he asked from the commander to be taken to the doctor's because he had psychical problems. The Guard refused to take him to the doctor for what he protested and after that he hit his head in the bars.

After that, a member of the Security Service, whom he know by the nickname "Pit-bull" tied hands behind the back, and then called, over the radio, other commanders who had not been present and told them that he was attacked by A.M.

Then, the members of the Security Service, while he was kneeling on the ground, punched him on the head, beat him with nightsticks on back and kicked him all over his body. Witnesses of this event are V.M., M.M., M.P. and A.M., who later told him that so many commanders were on him, that they couldn't see him at all.

After the end of beating the prisoner was taken to the doctor and he said that the injuries were recorded in medical records. During the intervention, his head and back were injured, where he had many hematomas. After the examination by a doctor in the Penitentiary Niš hospital, he was taken to the city hospital, to neurology department, to have his head x-ray shot.

- those on whose behalf the disciplinary report was submitted -

1. D.M., Personal Identification Number 7425, Penitentiary Niš

Incident described in previous part.

2. M.P., Personal Identification Number 8014, Penitentiary Niš

On 29.03.2011. the prisoner was taken out of the Penitentiary for a court trial. When he was brought back to Penitentiary, he was searched at the gate No 19 and in the bread he brought from the City, the guards found hidden cell phone.

There were four or five guards who also searched him and he was ordered to take off all his clothes except for the underwear. Then they darkened the room in which the search was done, by pulling on dark curtains on the windows. After that they punched him and when he fell on the floor they kicked him and beat him with nightsticks on his head and body.

At that occasion he got visible head injuries, numerous hematomas all over his body, a scratch on his ribs and few days after this incident he urinated blood.

He was taken back to his cell in such condition and, only on the second day after the incident was he taken to the doctor who, based on the prisoners' opinion, recorded all the injuries in the medical file.

Based on prisoner's statement, after the incident itself, he was being persuaded by the Head of Security Service and one Supervisor not to submit a report against officers. At the same time, another prisoner who was in the cell with M.P. at that time, was being persuaded by the Guards to persuade M.P. not to submit disciplinary report.

- those who gave up for some reason from submitting the disciplinary report or disciplinary procedure was not initiated against them –

1. S.O., Personal Identification Number 5254, Penitentiary Niš

On 15.06.2011. the prisoner was taken to medical examination to the doctor by the member of Security Service whose name he did not know, but he knew their badges numbers 1522 and 1604.

While they were taking him to the doctor and back, he was beaten on the back and legs. As a consequence of this he had bruises all over his body, on legs and back. He did not report these injuries to doctor because he thought that they either don't register them properly or they don't register them at all.

He thinks that the aim of abuse was to lead him into self-injury, by which he would commit a disciplinary offense. He is convinced that this is a continuation of psychological abuse to which he has been exposed continuously from December 2009, when he was deliberately placed in a room with two prisoners with whom he had a bad relationship and who harassed him physically and mentally for few days. They did this in a way that they abducted his prescribed therapy, took away personal belongings, threatened him and physically abused him. For that reason he self injured at least for one time.

2. V.I., Personal Identification Number 9369, Penitentiary Niš

On 23.11.2011, the prisoner was arrested and transferred to District Prison in Vranje from which he escaped 8 months ago.

The next day, around 9:00 pm, a member of the Security Service, whom he knew by the nickname "Micko", approached him and insulted him and cursed him without any cause while V.I. just kept silent. Then this guard kicked him hard in the ribs on the right side, so that he fell on the floor. The guard continued to kick him for few minutes more, mostly on the back, all the time cursing and insulting him. He was then transferred by a Prison car to Penitentiary Niš. He was there examined by a doctor to whom he reported that he had been beaten, but the doctor refused to register that in the medical file as well as to list the injuries.

B. Representation in disciplinary procedures

B1- Course of disciplinary procedure

Course of disciplinary procedure comprises:

- Delivery of inviting letter for disciplinary rapport to a prisoner, and eventually proposal for initiation of disciplinary procedure;
- Reading of Disciplinary report;
- Prisoner's defense;
- Hearing of witnesses;
- Insight in written evidence;
- Final word;
- Duration;
- Number of sessions in the case;
- Decision on Disciplinary measure.

Disciplinary procedures were conducted in cases of the following prisoners:

1. I.V.

On 23.02.2011 in the premises of Penitentiary Niš a session of disciplinary commission was held in the process of determining responsibility of prisoner V.I.

Senior supervisor Đ. submitted a disciplinary report against prisoner I.V. for alleged severe violation of discipline- *Refusing to execute lawful order issued by officer due to which occurred or could have occurred a serious consequence from Article 145 Paragraph 1 Point 10 of the Law on the Enforcement of Criminal Sanctions*. Disciplinary offence was allegedly committed on 25.01.2011. when the prisoner, based on the statements in disciplinary report, the prisoner cursed senior commander during taking out for a walk.

The session of disciplinary commission lasted about 15 minutes, after a delay of nearly an hour. Prisoner I.V., after a confidential conversation with his attorney, presented his defense that was truly registered in the minutes by the President of the Commission. Then the commander, who was allegedly present during the critical event, was heard as a witness.

During the disciplinary proceedings, related to the use of physical force against the prisoner, the following was said: the convict said that he was subjected to physical force, and the commander said that he (the prisoner) was subjected to isolation measure.

Prisoner I.V. said that other three prisoners were present when the incident happened, two of whom are still in Penitentiary Niš. To the third one the penalty expired, which was confirmed by the heard witness - the commander. The defense required to hear in the procedure at least these two prisoners as direct witnesses of the incident. This, even more for the fact that swearing is not arguable, but the content of cursing and to whom it was addressed.

The proposal of the defense was rejected with verbal explanation of the President of the Commission that "required hearings are not necessary since there are already questioned officers who confirmed that the incident took place as it stands in the report".

Simultaneously with the decision on rejecting the proposal of the defense to hear the witness, the Commission immediately announced that prisoner I.V. was pronounced guilty and sanctioned with a disciplinary measure of solitary confinement during whole night and day in duration of 10 days. After that the defense pointed to that in this way the procedure was shortened contrary to

the provisions of the Law since the attorney and defendant were not given right to present their final words before the bringing of the decision by the disciplinary Commission. After this intervention, the attorney presented his final word that was not registered in the Minutes, the decision was not changed and it was not deliberated on the final word.

After the receipt of written decision by the Disciplinary Commission, prisoner's attorney lodged an appeal to the Directorate for the Enforcement of Criminal Sanctions. The Directorate rejected the appeal as ungrounded.

2. B.T.

A commander submitted a disciplinary report against prisoner B.T. for alleged severe violation of discipline - *Violence towards other person* Article 145 Paragraph 1 Point 5 and *Refusing to execute lawful order issued by officer due to which occurred or could have occurred a serious consequence* from Article 145 Paragraph 1 Point 10 of the Law on the Enforcement of Criminal Sanctions committed on 22.03.2011.

According to the statements in disciplinary report, B.T. physically attacked and punched other prisoner in a TV room in Penitentiary Sremska Mitrovica, without any reason and cause.

The explanation of the Requirement for initiation of disciplinary procedure does not include the use of physical force over the prisoner.

According to the statements given by the prisoner, he and other actors in the incident in TV room, peacefully, without resistance, based on officer's (commander) order went down to the ground floor of the building, after the event described in the Requirement for initiation of disciplinary procedure. There they hand-cuffed them, only after they entered the room not covered by cameras. Prisoners did not resist in none of the cases. In this way, the legal conditions from which the need for use of coercive measures would occur were not fulfilled.

The session of Disciplinary commission started on scheduled time and lasted for 30 minutes. Prisoner B.T. exposed his defense which was registered in the Minutes, by the President of the Commission, in a way that it minimized the statements of the prisoner on the abuse by the commander while the alleged incident in the TV room was overemphasized. Due to that the attorney had to intervene aimed at registering in the Minutes all the data of importance for rightful decision making. After that certain corrections were made, in some parts the statements of the prisoner were registered, by which we may consider that the Minutes were produced in line with the Law.

The prisoner in his defense stated that other prisoners were also present when the incident happened. The defense asked to have them heard in the procedure as well as to face prisoner B.T. and prisoners S.B. and B.S., who by personally written statements produced immediately after the incident, accused him as an actor in it.

This proposal was rejected as unneeded.

Then the Commission announced that prisoner B.T. was pronounced guilty and sanctioned with a disciplinary measure of solitary confinement in duration of 15 days, during whole night and day.

Prisoner's attorney submitted the complaint in the legal deadline to the Director of Directorate for the enforcement of criminal sanctions. The appeal was rejected as ungrounded and first instance

decision was confirmed. On 26.06.2011. on behalf of the prisoner, the attorney initiated administrative procedure in Administrative court in Belgrade, with a lawsuit to annul the decision of the Director of Directorate. The procedure per this lawsuit is still underway.

3. D.M.

A supervisor submitted a disciplinary report against prisoner D.M. for alleged severe violation of discipline - *Violence towards other person* Article 145 Paragraph 1 Point 5 and *Refusing to execute lawful order issued by officer due to which occurred or could have occurred a serious consequence* from Article 145 Paragraph 1 Point 10 of the Law on the Enforcement of Criminal Sanctions committed on 22.08.2011. According to the statements in the disciplinary report prisoner D.M. tried to rape and ill-treat the damaged - prisoner A.G., in the other pavilion, in cell No 14, around 01.30.

The session of Disciplinary Commission started at scheduled time and lasted for around 30 minutes, with interruptions for printing the statement of the witness and the Minutes, since no other works except for one in the Management building. Prisoner D.M. presented his defense which was registered in the minutes by the President of the Commission poorly and shortest possible, but formally and in line with the law.

The defense does not know whether the use of force and nightstick was properly documented, as prescribed by Law. In the list of acts in the subject there is a report of a doctor in relation to health care condition of prisoner A.G. with stated scratch on the nose as well as the report on medical examination of D.M. with stated hematomas on the back ("two to three").

At the proposal of the Defense damaged A.G. was heard. He stated that at that occasion D.M. "tried to rape him and "Old man" (prisoner Ž.N. – third inmate in room 14) and that he ill treated them". When the defense asked him why in his written statement immediately after the incident he did not write that D.M. tried to rape "Old Man" as well, as he stated on the day of hearing, the witness said that it was because he just ill treated the Old Man.

Based on the statements of this witness three guards entered the room at that occasion while in the commander's Đ. note, based on which disciplinary report was written, it says that only he (commander Đ.) entered the room and that only he beat D.M. on back, with nightstick, because he did not obey the order to get out of the room.

The prisoner in his defense said that there were three officers from Penitentiary Niš present when the incident happened which was confirmed by the damaged, as well which is contrary to the statements from the official note based on which the procedure was initiated. Because of that the Defense required to, aimed at determining factual condition in the procedure, hear as witnesses, supervisor S.C. and M.Đ., for whom je D.M. claimed that he was the main one who gave orders and executed his beating and who wrote the official note on the incident.

This proposal was rejected, without any explanation.

After that the Commission announced that prisoner D.M. was pronounced guilty for the disciplinary offense from Article 145. Paragraph 1 Point 5 and punished with disciplinary measure of solitary confinement during the whole day and night in duration of **5** days.

Upon the receiving of the Decision, the attorney appealed to the Director of Directorate, in legal deadline of three days after receiving written decision. The appeal was rejected as ungrounded and first-instance decision was confirmed.

4. A.M.

A supervisor submitted a disciplinary report against prisoner A.M. for alleged severe violation of discipline - *Refusing to execute lawful order issued by officer due to which occurred or could have occurred a serious consequence from Article 145 Paragraph 1 Point 10 of the Law on the Enforcement of Criminal Sanctions*, committed on 10.11.2011. around 22.30.

Disciplinary Commission session was postponed for two times. First time because prisoner A.M. engaged an attorney, so the practice of disciplinary commissions in Penitentiary Niš is that in such cases the session is postponed in order to make preparations. Next time the session was scheduled for 18.01.2012. but it was also postponed by a letter of the President of Disciplinary Commission because one of the Commission embers was prevented from participating in it. In that letter the attorney was informed that the session was scheduled for 30.01.2012. at 10,00.

This session of Disciplinary Commission started with a delay of 25 minutes and it lasted around 30 minutes. Prisoner A.M. presented his defense which was registered in the Minutes of the session by the President of Commission in a way that it minimized prisoner's statements on abuse by a commander while overemphasizing the alleged incident in prison hospital. Based on the statements from disciplinary report based on the official note of the commander, A.M. used a moment when the commander took him to the doctor on the lower floor, snatched and hit his head in the wall for two times and then, fell on his back and hit his head on the floor. Although prisoner A.M. thoroughly described how he was beaten by several commanders, this part of his statement was in the lightest possible form registered in the Minutes, and only after the attorney's intervention.

In his defense the prisoner said that the Supervisor persuaded him, immediately after the incident, not to declare in the written statement that he was beaten by the commander. This statement of the prisoner was registered in the Minutes of the Disciplinary procedure.

Since the prisoner stated in his defense that other prisoners were present when the incident happened the defense required to hear these persons in the procedure as direct witnesses of the event.

This proposal was accepted, contrary to the existing practice in such procedures. Disciplinary Commission, after short deliberating, in line with the law, decided to hear the witnesses at the following session scheduled for 24.02.2012.

On 06.03.2012. second session of Disciplinary Commission of Penitentiary Niš was held, in the procedure against prisoner A.M.

Witnesses which prisoner A.M. named as ones present when the incident happened were invited to this session of Disciplinary Commission. All three have been in the prison hospital for a longer period of time due to health problems.

The common thing in the statements of all three witnesses is that "they know for which incident they call them" but that "they don't remember anything because they have psychical problems" (brain attack and kidney cancer prisoner V.M.; depression prisoner M.M.) and prisoner A.M.

“know why they call him, that he was in the prison hospital on that day, but that he did not hear or see anything and does not want to testify”. All three of them practically refused to speak about the incident, and the only one who explicitly said that was A.M.

It should mention that it was very difficult to hear what the witnesses said because they spoke silently while on the other side of the room there was a group of commanders who talked loudly while drinking coffee and laughed even louder.

For this session, based on the request of the defense of prisoner A.M., and in line with the law, the report of Medical Service was delivered, from where it could be seen that after the incident doctor diagnosed injuries on the back, thighs and two hematomas on the back of the neck- size 3 x 3 cm and other 2 x 2 cm.

In the official note of senior commander D.J., which was initial act for initiation of disciplinary procedure against A.M., it is said that this commander “found A.M. hitting his head in the bars for several times” after which, after he took him to medical examination, " A.M. hit his head in the wall for few more times, bounced from the wall, fell on the concrete floor and hit his head (back part) on the ground". After that Commander D.J. "used force and two-three times beat A.M. with a nightstick on his back and arms after what he stopped resisting."

By comparing the contents of commander's official note and medical records, the defense came to the conclusion that ascertained injuries in the medical report did not match the injuries that can occur due to the use of coercive means as it was written in the official report, but that they completely match the description of events given by prisoner A.M. For example, it remains unclear how A.M. received two injuries on the back of head, when, according to the commander's official note, he fell only once and hit his head on the floor.

The defense pointed to this illogical thing to the members of the Commission, but casual comment, of the President of the Commission, not registered in the Minutes, was that A.M. was probably rolling on the floor and thus gained the second injury on the back of his head.

That is why the defense proposed to hear Commander D.J. in the continuation of the procedure aimed at clearing out this controversial situation, After short deliberation, Disciplinary Commission rejected this proposal with explanation that factual condition of the event was cleared out completely even without this evidence.

In the final word of the defense, the attorney analyzed presented evidence and required to free prisoner A.M. from responsibility for disciplinary offense for which he was charged, due to the lack of evidence.

After that the Commission, after short deliberation, announced that prisoner A.M. was found guilty for disciplinary offence from Article 145, Paragraph 1, Point 10 and sanctioned with disciplinary measure of solitary confinement in duration of 5 days - on probation two months.

To such decision, defense will lodge an appeal to the Director of Directorate, in the legal deadline of three days upon receiving written decision, which has not happened yet (middle of April).

B2 - Legal analyses

Disciplinary procedures conducted during the project activity related to 2 severe disciplinary offences:

- *Violence towards other person* Article 145 Paragraph 1 Point 5 of the Law on the Enforcement of Criminal Sanctions
- *Refusing to execute lawful order issued by officer due to which occurred or could have occurred a serious consequence* from Article 145 Paragraph 1 Point 10 of the Law on the Enforcement of Criminal Sanctions

In these disciplinary procedures, the Lawyer of the Center for Human Rights-Nis acted as attorney to defendants.

Out of four disciplinary procedures, one was conducted for the offence from point 10, one for the offence from point 5 and two for both offences cumulatively. Three disciplinary procedures were led in front of Disciplinary Commission of Penitentiary Niš and one in front of Disciplinary Commission of Penitentiary Sremska Mitrovica.

In three out of four cases there is direct violation or partial ignorance of Article 158 of the Law on the Enforcement of Criminal Sanctions, in which the disciplinary body is obliged to check and present all the evidence relevant to the decision. Rulebook on disciplinary offenses, measures and procedures towards prisoners envisages in Article 10 that the authority shall be obliged to determine with equal attention all the facts that the defendant is charged with, and those in his favor.

In the above cases, the disciplinary commissions presented only evidence proposed by the submitter of the report- officer and no evidence put forward by the defendant or defense. In one case (D.M.), Disciplinary Commission of Penitentiary Niš did not hear even the submitter of the report- supervisor, who was properly informed-invited and who did not justify his absence. With such conduction of the procedures, defendant's right to defend, provided by the above regulations, the Serbian Constitution and Article 6 of the European Convention for the Protection of Human Rights and Freedoms, was violated.

Only in one of the procedures in front of Disciplinary Commission of Penitentiary Niš (prisoner A.M.) the requirements of the Law on the Enforcement of Criminal Sanctions and Rulebook in this regard were consistently observed.

In addition to this procedural objection related to the course of disciplinary procedure in front of the Disciplinary Commission, as a particular problem should be pointed out taking of personally written statements from persons involved in a potential violation of discipline and from the witnesses. Namely, Article 42 of the Rulebook provides that a written statement by a prisoner about the incident and official notes about the incident should be provided as an annex to disciplinary report, among other documents.

However, none of the Articles in the Rulebook, nor any sub-legal act or Law on the Enforcement of Criminal Sanctions anticipate the obligation of officer to, before creation of this statement, inform the prisoner about the fact that such statement may be used against him in eventual procedure and that he is not obliged to produce such statement. This is an enormous lack, especially when born in mind that the Rulebook anticipates possibility that the prisoner, at the very session of the Commission does not expose his defense, i.e. practices his "right to remain silent". In that way, the defence by remaining silent, is made nonsensical because the very thing used in procedure is defendant's personally written statement, produced without previous necessary warnings.

A particular problem is that disciplinary organs either completely neglect or easily pass over the statements of prisoners related to unlawful use of force by officials of the Penitentiary. This is for the reason that such conduct, in addition to serious disciplinary offense, *over exceeding of authority in use of coercive measures* from Article 266, Paragraph 3, Point 10 of the Law on the Enforcement of Criminal Sanctions, simultaneously fulfill important elements of criminal act, *ill treatment and torture* from Article 137, Paragraph 3 in relation to Paragraph 1 of the Criminal Law.

Given criminal act belongs to a group of criminal acts treated ex-officio and where legal obligation of every citizen, especially state officer, is provided for, to inform the state prosecutor in charge about the suspicion that a criminal act was committed. It is not up to any state officer or other citizen, in this case members of disciplinary commissions, to evaluate the level of groundedness of suspicion, but their obligation is to inform the prosecutor in charge about that.

In all procedures conducted for disciplinary offenses from Article 145, Paragraph 1 point 10 of the Law on the Enforcement of Criminal Sanctions, it is not clearly defined which officer's order was not executed and in which cases exactly the prisoner did not execute or refused to execute the order, and it was not especially, at least, hinted, which severe consequences occurred or could have occurred.

All of the above remarks, according to current court practice, would be sufficient reason for the cancellation of judgments based on these violations of procedure in criminal proceedings in front of a court in charge.

In all the appeals to first-instance decisions of disciplinary commissions, Directorate for the Enforcement of Criminal Sanctions confirmed the decisions without any serious analysis of the pointed remarks.

In respect of the manner of work of disciplinary commission of Penitentiary Niš, it is necessary to say that this commission works in the environment in which there are several factors that act as a factor that limits the quality of acting. Above all, disciplinary commission does not have a room intended for or intended mostly for disciplinary commission sessions.

It leads to two situations: in first, when the defendant does not have attorney, session is held in some of the rooms in the closed part of the penitentiary; in second situation, disciplinary commission sessions are held in room out of the closed part of penitentiary used for receiving and distribution of parcels.

In first situation the procedure is going on very fast, which is probably to the damage of the quality, minutes are done in handwriting, they are very short and usually of incomplete contents. In second situation the minutes are done on the laptop, then the minutes are taken to the management building where there is only one, frequently out of work printer, which makes the procedure very slow. As well, it is a common situation that in the other part of the same room there is a group of staff or prisoners who do not have any relation to the procedure, and who, with their presence, loud discussions or in some other way make the conduction of the procedure difficult.

B3 – Sanctions in disciplinary proceedings

1. I.V.

Prisoner I.V. was pronounced guilty and sanctioned with disciplinary measure of solitary confinement in duration of 10 days during the whole day and night.

2. B.T.

Prisoner B.T. was pronounced guilty and sanctioned with disciplinary measure of solitary confinement in duration of 15 days during the whole day and night.

3. D.M.

Prisoner D.M. was pronounced guilty and sanctioned with disciplinary measure of solitary confinement in duration of 5 days during the whole day and night.

4. A.M.

Prisoner A.M. was pronounced guilty and sanctioned with disciplinary measure of solitary confinement in duration of 5 days during the whole day and night.-on probation two months

According to the provisions of the Law on the Enforcement of Criminal Sanctions, the disciplinary measure of solitary confinement is imposed only in exceptional cases, only for serious disciplinary offenses and may last no longer than 15 days. In the case of the confluence of disciplinary offenses, it is possible to impose a measure of solitary confinement for up to 30 days.

In three of the four disciplinary proceedings conducted in the reporting period, the disciplinary measures imposed were unconditionally isolation, and in one case, the imposed isolation was conditioned to two months. It may be concluded that the imposition of isolation measures is, in a way, a rule, very rarely conditioned, although Law on the Enforcement of Criminal Sanctions provides for the opposite.

In cases where the imposed measure of solitary confinement is for unconditional term, it can be concluded that in one case, solitary confinement was imposed for a disciplinary offense in duration of 10 days, while in the second case the measure of solitary confinement for a period of five days is imposed for a confluence of disciplinary offenses. It follows that either one measure is too lenient or other measure is too severe, or both. In any case, from the explanations themselves it can not be undoubtedly concluded what was the decisive factor when deciding about the length of a measure. In the case where the imposed measure of solitary confinement was 15 days, it is about a disciplinary procedure for two offenses in confluence, which means that the imposed measure could have been for 30 days, which can classify the imposed measure as moderately severe.

In respect of appeals against decisions imposing solitary confinement measures, it could be said that the effectiveness of this legal instrument is disputable. Namely, since the complaint does not delay the enforcement of the decision, isolation measures are done automatically, which leads to the fact that the appeal itself is pointless, since it can not correct the situation created by

enforcement of solitary confinement before the validity of the decision (or bring him back in personal condition he was in before this severe measure).

B4 - Analysis of gathered information in relation to selected target group - potential victims of torture and ill- treatment

In disciplinary procedures in which the Lawyer of the Center participated, legal qualification of disciplinary offences that prisoners were charged with did not always match the factual description of the offense in disciplinary report. This is especially related to disciplinary offense *Refusing to execute lawful order issued by officer* because the factual description of the offense, itself, in separate cases was either given poorly or there is none.

In the disciplinary reports and proposals for the initiation of disciplinary procedure it is mostly very generally and superficially stated that nightstick and other coercive measures were used. Disciplinary report or the proposal for initiation of disciplinary procedure does not contain declared injuries that the prisoner gained in the incident, no matter he injured himself or the injuries are consequence of actions by official or third persons.

In some procedures the case file is paired with medical report on the medical examination of the prisoner after the use of force, but such manner, although correct, can not be considered a rule. Where there are reports on injuries the prisoner got, description of injuries generally does not match with the description of the incident from the official records and disciplinary report. At the same time, the description of events in which there has been use of coercive measures given by the prisoner does not match the report of the officer who used that force, nor with a medical report, when it exists.

That is why it may be concluded that official evidence on use of coercive measures, meaning report of the officer who used coercive measures and doctor who stated the injuries, are of very limited value and that they can hardly be accepted as valid sources of information.

All this should be observed in the light of already described disinterest of disciplinary commissions, in described cases, for registering prisoners' injuries in the Minutes on the course of disciplinary procedure.

In those cases when the use of coercive measures was justified, it was not proportionate to the severity of eventual offense and it can be estimated as exceeding allowed force.

C. Disciplinary reports against officers

During the project duration, Lawyer of the Center submitted, on behalf of two prisoners, proposals for initiation of disciplinary procedures against several members of Security Service in Penitentiary Niš. Proposal for initiation of disciplinary procedure against members of Security Service in Penitentiary Sremska Mitrovica was submitted by the prisoner B.T. himself. Reports are submitted for severe disciplinary offence - *Exceeding powers in use of coercive measures*. Article 266 Paragraph 3 Point 10 of the Law on the Enforcement of Criminal Sanctions.

As a limiting factor in first case (Prisoner M.P.) appears a fact that the prisoner addressed Center for Human Rights Niš, after almost six months after the incident. Thus, the disciplinary report is hardly provable since there were no neutral witnesses, injuries were not visible and medical file is not of any importance.

In second case (D.M.), prisoner phoned the lawyer of Center for Human Rights Niš and informed him that he was required to draw back his statement by Security service officers from Niš Penitentiary. As a possible incentive means for concluding in such agreement based on which the prisoner who has already served the punishment in disciplinary procedure should forget or forgive the abuse to which he was exposed, serves the fact that in the meantime he was transferred from the Department under special surveillance to A pavilion in which accommodation conditions are on much higher level.

D. APPENDIX: Individual cases, Legal analyses:

1. Defense in disciplinary procedure – prisoner I.V.

Date: 23.02.2011.godine

Place: Niš Penitentiary

Prisoner V.I. is charged with a serious disciplinary offence from the Article 145, Paragraph 1, point 10 of the Law on the Enforcement of Prison Sanctions. This offence is *committed by a prisoner who refuses to carry out the lawful orders of the authorized person for which reason occurred or may occur serious adverse consequences.*

As an act of a criminal offense it was stated that the convicted V.I., while being taken out for a walk, said to a senior commander, unchallenged "Mother fuck you Gendarme, what are you doing in isolation?"

However, neither in the disciplinary charges, nor in the defense of a convicted person, or in the testimony of witness – security service officer, it was not stated that any warrant or order was issued to the prisoner, and especially not the rightful order, so that is clear that the basic element of the offense for which the prisoner is charged is not fulfilled and that is the refusal of a lawful order given by an authorized person. Therefore, it is clear that the convicted person was found responsible for an offense he did not commit, for which he was reported superficially, with no analysis of violations and enforcement actions, which exceeded the charges to the damage of a prisoner.

Furthermore, according to the Article 158 of the Law on the Enforcement of Prison Sanctions "*Prisoner against whom the disciplinary procedure is conducted is obligatory hears and statements he gives are checked and other proofs are being carried out.*". In this disciplinary procedure only proofs proposed by the submitter of the charges were carried out, while none of the evidence proposed by prisoner and defender were carried out. This one-sidedness has led to the fact that factual condition was erroneously defined without respect of basic obligation of the organ in the procedure to pay the same attention to proofs carrying out- both those that are to the damage and to the benefit of the prisoner.

Therefore, the basic assessment that the disciplinary proceedings, at least in this case, is maximally shortened and unilaterally conducted, exclusively to the damage of the person who is

reported as a offender, without going into the essence of things and without logical reasoning. The only important thing was to find the prisoner guilty, regardless of the facts or against them.

Besides that, Disciplinary Commission did not show, with a single word, that it was interested to initiate any process against the commander for eventual abuse and beating of the prisoner who spoke about that during the proceedings.

In the records of the disciplinary hearings it is stated that it is "public". However, the fact that only the authorized persons and defender could participate, while the presence of other persons in sense of publicity is completely excluded by the fact that no entrance in Penitentiary is allowed without a permit issued by a person that is conducting the procedure. This is related to lawyers as well- the defender was waiting in the waiting room for an hour at the entrance in Penitentiary, after what the president of the Commission invited him in. In relation to the length of the waiting the hearing was comically short (no longer than 15 minutes, including confidential talks between the prisoner and defender).

2. Defence in disciplinary procedure – prisoner T.B.

Date: 28.04.2011.

Place: KPZ Sremska Mitrovica

Prisoner T.B. is charged with serious disciplinary offence *violence towards another person* from Article 145, Paragraph 1, Point 5 of the Law on the Enforcement of Prison Sanctions.

According to the Article 158 of the Law on the Enforcement of Prison Sanctions *"Prisoner against whom disciplinary procedure is conducted is obligatory heard and statements he gives are checked and other evidence are presented"*. In this disciplinary procedure, only evidence proposed by the submitter of charge were presented while the evidence suggested by prisoner and defence were not presented at all. Such one-sidedness led to the fact that facts are wrongly determined and the prisoner was found guilty based on wrongly and incompletely determined facts and without respect of basic obligation of the organ in the procedure to present the evidence both to the damage and in favour of the prisoner. This is an obligation of each organ deciding in court and other procedures equalized to court ones and not only according to the valid legislation of the Republic of Serbia but, as well, according to the Article 6 of European Convention for the Protection of Human Rights and Basic Freedoms.

Thus, the basic evaluation is that disciplinary procedure against T.B. was one-sidedly carried out, exclusively to the damage of the person reported for committing the offence, without going into the core of the subject and without elementary check of the evidence proposed by the Defence. The only important thing was to find the prisoner guilty no matter facts or against them.

Besides that, the Commission did not show with a single word that it was interested for processing the commander for eventual abuse and beating of the prisoner who spoke about that in detail an persuasively during the hearing, although every citizen, especially state organ, is obliged to report an offence that is prosecuted ex officio.

3. Defense in disciplinary procedure- prisoner D.M.

Date: 31.10.2011.

Place: Penitentiary Niš

Prisoner M.D. was charged with the commitment of two serious disciplinary offences: *violence towards other person* from Article 145, Paragraph 1, Point 5 of the Law on the Enforcement of Criminal Sanctions and *refusal of officer's legal order* from Article 145, Paragraph 1, Point 10 of the Law on the Enforcement of Criminal Sanctions.

According to the Article 158 of the Law on the Enforcement of Criminal Sanctions, "*A prisoner under disciplinary proceedings shall be obligatory questioned and his statements will be checked and other evidence presented*" In this disciplinary procedure evidence proposed by the submitter of the report were presented and only one evidence proposed by the prisoner and attorney-hearing of the witness - damaged A.G. Besides that, even the submitter of the report was not heard- supervisor Cvetović, although he was properly invited to hearing and he did not justify his absence. Such one-sidedness brought to the fact that factual condition was wrongly determined and the prisoner was announced guilty based on wrongly and incompletely determined factual condition and without respect of basic obligation of organ in the procedure to present with the same attention, both the evidence to damage and to favor of a prisoner. This is an obligation of each organ deciding in court and other procedures that are equalized with court ones, not only according to the acting laws of the Republic of Serbia, but also according to the Article 6 of the European Convention for the Protection of Human Rights and Basic Freedoms.

Thus, the basic evaluation is that disciplinary procedure towards M.D. was one-sidedly conducted, exclusively to the damage of a person that was reported to have committed an offence, without getting into the core of the matter and without elementary, more serious check of evidence proposed by the defense. The only important thing was to announce the prisoner guilty, no matter the facts or against them. The basic impression is that the Commission was simply in a hurry to finalize the matter and that the decision had been brought in advance.

This is even more clear when it is visible from the text of the minutes whose copy was delivered to the attorney, where one can see that the Commission announced M.D. guilty only for the offence from the Article 145 Paragraph 1 Point 5 of the Law on the Enforcement of Criminal Sanctions, while noting else in respect of other offence is mentioned in the minutes which represents a clear violation of the provisions of the procedure and would have to bring to abrogate the decision. Namely, it was necessary for the commission either to state that it freed M.D. from responsibility for other offence or to punish him with a unique sentence for both offences.

4. Defense in disciplinary procedure – prisoner A.M.

Date: 30.01.2012. and 06.03.2012.

Place: Penitentiary Niš

Prisoner M.A. was charged with one serious disciplinary offence- *refusal of officer's legal order* from Article 145 Paragraph 1 Point 10 of the Law on the Enforcement of Criminal Sanctions.

According to the Article 158 of the Law on the Enforcement of Criminal Sanctions, "*A prisoner under disciplinary proceedings shall be obligatory questioned and his statements will be checked and other evidence presented*". In this disciplinary procedure evidence proposed by the submitter of the report were presented and out of the evidence proposed by prisoner's defence the only that was done was hearing of a witness and medical report was provided.

This is surely advancement in comparison to previous disciplinary procedures, but, only that is not enough. Namely, neither submitter of the report nor senior commander who directly participated in the incident were heard directly by the Commission in the presence of the prisoner and attorney. On the other hand it is impossible to understand as accidental the amnesia that stroke all three witnesses proposed by prisoner A.M. It was obvious that they did not want to testify in front of officials and that they find the excuse for that in medical condition. The fact that this impression is true is supported by another fact that these three prisoners were pretty joyfully and without any psychical disturbance talking to each other and to commanders who brought them, which was seen by the defense because these persons were held in the same room for around 45 minutes and the attorney was in the same room waiting for the minutes to be signed because the electricity went out.

That is why I think that factual condition was wrongly and incompletely determined and prisoner was announced guilty based on factual condition determined in that way, and essentially without consistent respect of a basic obligation of the organ in the procedure to present with the same attention, both the evidence to damage and to favor of a prisoner. This is an obligation of each organ deciding in court and other procedures that are equalized with court ones, not only according to the acting laws of the Republic of Serbia, but also according to the Article 6 of the European Convention for the Protection of Human Rights and Basic Freedoms.

It is basic evaluation that the disciplinary procedure against M.A. was conducted formally and ostensibly in line with the law, but factually without getting into the core of the matter and elementary serious check of evidence proposed by the defense.

E. APPENDIX: Disciplinary Commissions` decisions

Republic of Serbia
Ministry of Justice
Directorate for the Enforcement of Criminal Sanctions
Penitentiary Niš
No: 24-156/2011-01/3
Date: 23.02.2011.
Niš

Pursuant to the Article 158 of the Law on the Enforcement of Criminal Sanctions /Official Gazette of the Republic of Serbia No 85/05 and 72/09) and Article 61 of the Rulebook on disciplinary offences, measures and treatment towards prisoners (Official Gazette of the Republic of Serbia No 59/06) the following is produced:

MINUTES ON THE COURSE OF DISCIPLINARY PROCEDURE

Held on 23.02., in front of Disciplinary Commission of Penitentiary in Niš, in the subject of disciplinary responsibility of prisoner V.I, at the proposal for initiation of disciplinary procedure by senior Supervisor C.S. from 26.01.2011 for grounded suspicion that he committed serious disciplinary offence from Article 145, Paragraph 1, Point 10 of the Law on the Enforcement of Criminal Sanctions.

Hearings are public
Hearings start at **10.00.**

Present:

Prisoner against whom the procedure is conducted: **V.I.**
Submitter of the proposal **C.S.** was properly invited

Disciplinary Commission

President of Disciplinary Commission: Mladenović Vesna
Member: Radojković Nebojša
Member: Vujović Žarko
Minutes recorded by: Blagojević Zdenka.

In line with Article 161 of the Law on the Enforcement of Criminal Sanctions and Article 53 of the Rulebook on disciplinary offences, measures and treatment towards prisoners, the prisoners are informed that they are entitled to expert legal aid, and prisoner in the procedure says that he wants expert legal aid - Lawyer Cvejić Aleksandar.

Prisoners are taught about the right of use language and script.
Proposal for initiation of the procedure is read out and prisoner, after declaring whether he understands for what he is charged, gives the following statement about the statements from the proposal:

Statements from the proposal for initiation of the procedure are not true. On the given day it was icy and due to inattention I slipped and fell. I swore, more for the fact that I fell, that curse was not addressed to the commander. Besides me there were three more prisoners who saw that I fell and heard that I cursed the ice, and the commander thought that I cursed him. I was separated from the walk line by the commander, slapped, night stick was used on me, which I couldn't say in my statement. I did not give resistance to the commander, all the time my hands were by my body. Prisoners who were present are R.D., N.N. and Đ.D.

Statement given by the
prisoner

Senior commander Đ.I., as a witness:

I was present at the time of the incident. Statements from the proposal for initiation of disciplinary procedure are true. I was present when prisoner I.V. insulted the commander after which he was taken out from the walk line by the senior commander Đ.

During the walk I was in the guard house while Đ. let them in the walk line. Besides prisoner I.V. there were also prisoner R.D., a prisoner whose name I do not know but who is called "Bliski" and one more prisoner whose identity I cannot remember.

Attorney of the prisoner requires hearing of prisoners R.D. and N.N.

In the final word Attorney Cvejić Aleksandar

I consider that by none of the presented evidence it was determined that the reported prisoner committed the offence he is charged with. Neither from the report nor from the statement of the heard witness, officer, does it come that the submitter of the report issued any kind of order or a report and for that reason I consider that here are no grounded elements of the offence he is charged with. I consider that disciplinary commission was obliged, in order to determine the complete factual condition, to hear as well two proposed witnesses and also for the fact that it is about the persons who did not participate in any manner in the incident, except as witnesses who are not interested for the final outcome. I consider that all the conditions are fulfilled to free the prisoner from the report.

Aleksandar

Attorney Cvejić

Disciplinary Commission brings a:

DECISION

Proposal by Attorney Cvejić Aleksandar for hearing of prisoners R.D. and N.N. is rejected and it decided about the punishment.

Evidence procedure:

Read out:

Proposal for initiation of Disciplinary Procedure from 26.01.2011.

Report for serious disciplinary offence from 25.01.2011.

Official note of senior commander Đ.M. from 25.01.2011.

Prisoner I.V.'s statement from 25.01.2011

Opinion of Treatment Officer from 22.02.2011

Conclusion from 16.12.2011

There are no proposals for presentation of new evidence

After the conducted evidence procedure, the prisoner is give final word and he says:

Disciplinary Commission brings the:

DECISION

Hearing is concluded

Prisoner V.I., Personal Identification Number 8258 , for the committed severe offence from Article 145, Paragraph 1, Point 10 of the Law on the Enforcement of Criminal Sanctions, is imposed a disciplinary measure:

OF SOLITARY CONFINEMENT DURING WHOLE NIGHT AND DAY, IN DURATION OF 10 DAYS

The minutes are read and signed without any remarks

Remarks of the prisoner to the contents of the minutes: no remarks

Minutes taken by:
Commission:

Prisoner:

Disciplinary

X X X X X

Republic of Serbia
Ministry of Justice
Directorate for the Enforcement of Criminal Sanctions
Penitentiary Niš
No: 24-599/2011-01/3
Date: 31.10.2011.
Niš

Pursuant to the Article 158 of the Law on the Enforcement of Criminal Sanctions /Official Gazette of the Republic of Serbia No 85/05 and 72/09) and Article 61 of the Rulebook on disciplinary offences, measures and treatment towards prisoners (Official Gazette of the Republic of Serbia No 59/06) the following is produced:

**MINUTES
ON THE COURSE OF DISCIPLINARY PROCEDURE**

Held on 23.02., in front of Disciplinary Commission of Penitentiary in Niš, in the subject of disciplinary responsibility of prisoner M.D. 7425, at the proposal of supervisor S.C. from 22.08.2011 for grounded suspicion that he committed serious disciplinary offence from Article 145, Paragraph 1, Points 5 and 10 of the Law on the Enforcement of Criminal Sanctions

Hearings start at **11.00.**
Hearings are public

Present:

Prisoner against whom the procedure is conducted: **M.D. and his attorney based on authorization, Cvejić Aleksandar**

Submitter of the proposal **C.S.** was properly invited

Disciplinary Commission

President of Disciplinary Commission: Suzana Tomić

Member: Nebojša Radojković

Member: Nikolić Goran

Minutes recorded by: Blagojević Zdenka.

In line with Article 161 of the Law on the Enforcement of Criminal Sanctions and Article 53 of the Rulebook on disciplinary offences, measures and treatment towards prisoners, the prisoners are informed that they are entitled to expert legal aid, and prisoner in the procedure says that he wants expert legal aid- Lawyer Cvejić Aleksandar from Belgrade.

Prisoners are taught about the right of use language and script.

Proposal for initiation of the procedure is read out and prisoner, after declaring whether he understands for what he is charged, gives the following statement about the statements from the proposal:

Prisoner M.D. said: Everything given in the proposal is not true, and I was forced to sign the statement by the commander M.Đ. I was fasting Ramasan Fast and after that I went to bed for a sleep. Statements in the proposal that I pulled A.G. to my bed and threatened him that I would beat him and rape him are not true. 14-15 days before this procedure I asked A.G. if I really ill-treated him and he said that the commanders made him write such statement. I ask from the Commission to free me.

Statement given by the
prisoner

Evidence procedure:

Read out:

Proposal for initiation of Disciplinary Procedure from 22.08.2011.

Report from 21.08..2011.

Official note of senior commander from 05.2011.

Statement of prisoner M.D. from 22.08.2011.

Conclusion from 23.09.2011.

Opinion of Treatment Service from 28.09.2011

The prisoner proposes to hear G.A., supervisor C.S. and commander Đ.M.

Disciplinary Commission brings a:

DECISION

To hear prisoner G.A. related to the circumstances –whether that night prisoner M.D. threatened that he would rape him and beat him.

Prisoner A.G. is introduced with the fact that he had to give true statement.

Prisoner A.G. declares: That night prisoner M.D. tried to rape me and “old man” N.Ž. I started to climb up the bed and M.D. pulled me and told me “I will rape you now!” “Old man” got up and we started to fight. Old man was banging on the door and commanders bumped in and said “Get out”, “Old man” and I went out and D.M. did not want to get out. I wrote the statement willingly, there was no coercion. We went to room No 6 and I am not familiar with what was going on in room No 14.

When asked by the member of the Commission if he had some injury, the witness replied that he had a scratch on his nose which was caused by his fell from the bed, when D.M. told him that he would rape him, and D.M. pushed him from the bed.

When asked by the member of the Commission if he was taken to the doctor’s he says that N.Ž. and him were taken to the doctor’s.

When asked by the member of the Commission in what relations he was with N.Ž. he said: we don’t communicate and before that we were in good relations.

When asked by the attorney why he wrote in the statement that D.M. tried to rape only him, and not the old man he said- I did not write that prisoner D.M. tried to rape the “old man” because he only ill treated him.

When asked by the attorney how many commanders entered the room and who of the commanders was there, prisoner A.G. replies: 3 commanders, I don’t know who they are.

When asked by the prisoner D.M. if he remembered that 14 or 15 days before this proceedings he asked him during the walk if he remembered what had happened that night and if he had raped him or ill treated him, prisoner A.G. replies: I don’t remember.

Statement given by prisoner

G.A.

Disciplinary Commission brings a:

DECISION

Proposal for the hearing of Commander M.Đ. and Supervisor C. is rejected

In the final word, the attorney of prisoner Cvejić Aleksandar:

There is no evidence that he committed any of the offences he is charged with, especially for the fact that written evidence and statement of heard witness are not in accordance. At the same time, the damaged gave two versions of the same incident from which it could be seen that the whole case was fabricated.

For that reason I propose that the Commission frees prisoner D.M. from disciplinary responsibility.

Aleksandar

Attorney

Cvejić

In the final word prisoner D.M. said;

Nothing is true and I wrote the statement that I wrote threatened by Commander Đ., S.M. and third Commander who worked with them in the shift. I was beaten and I did not give active resistance,

Prisoner M.D.

DECISION

Hearing is concluded

Prisoner M.D. 5980 , for the committed severe offence from Article 145, Paragraph 1, Point 5 of the Law on the Enforcement of Criminal Sanctions, is imposed a disciplinary measure:

OF SOLITARY CONFINEMENT DURING WHOLE NIGHT AND DAY, IN DURATION OF 5 DAYS

Minutes taken by:
Commission:

Prisoner:

Disciplinary

X X X X X X X X

Republic of Serbia
Ministry of Justice
Directorate for the Enforcement of Criminal Sanctions
Penitentiary Niš
No: 24-759/2011-01/3
Date: 30.01.2012
Niš

Pursuant to the Article 158 of the Law on the Enforcement of Criminal Sanctions /Official Gazette of the Republic of Serbia No 85/05 and 72/09) and Article 61 of the Rulebook on disciplinary offences, measures and treatment towards prisoners (Official Gazette of the Republic of Serbia No 59/06) the following is produced:

MINUTES
ON THE COURSE OF DISCIPLINARY PROCEDURE

Held on 30.01.2012 in front of Disciplinary Commission of Penitentiary in Niš, in the subject of disciplinary responsibility of prisoner M.A., at the proposal of Supervisor Z.N. from 11.11.2011 for grounded suspicion that he committed serious disciplinary offence from Article 145, Paragraph 1, Point 10 of the Law on the Enforcement of Criminal Sanctions

Hearings start at **10.00.**

Hearings are public

Present:

Prisoner against whom the procedure is conducted: **M.A.**

Submitter of the report Z.N. was properly invited

Disciplinary Commission

Deputy President of Disciplinary Commission: Mladenović Mirjana

Member: Vujović Žarko

Member: Radojković Nebojša

Minutes recorded by: Blagojević Zdenka.

In line with Article 161 of the Law on the Enforcement of Criminal Sanctions and Article 53 of the Rulebook on disciplinary offences, measures and treatment towards prisoners, the prisoners are informed that they are entitled to expert legal aid, and prisoner in the procedure says that he wants expert legal aid - Lawyer Cvejić Aleksandar.

Prisoners are taught about the right of use language and script.

Proposal for initiation of the procedure is read out and prisoner, after declaring whether he understands for what he is charged, gives the following statement about the statements from the proposal:

Prisoner M.A. said: it is true that I had mental problems and that I was under supervision of psychiatrist. It is true that I hit my head in the bar of the prison hospital and that I had psychical problems. It is not true that I gave any active resistance and I did not push away apprentice D., as it is given in the proposal. It is not true that when the commander took me to the doctor's I used the moment, snatched and hit my head in the wall for two times. Regarding the statement from 10.11.2011. I emphasize that the supervisor came to me for several times, with an aim to make me write such a statement. I declare that in the given incident, M.M., M.A. and M.V. were present, in the prison hospital.

I say that the basic reason of the incident was commander's nervousness for unfavorable result of the match, for which reason he applied illegal force-coercive measure, and when I was tied, he invited other commanders with explanation that I made problems and that is how I suffered innocent.

Statement given by the
prisoner

Evidence procedure:

Read out:

Proposal for initiation of Disciplinary Procedure from 11.11.2011.

Report from: 10.11.2011.

Official note of senior commander J.D. from 10.11.2011.

Prisoner's statement from 10.11.2011.

Opinion of the Treatment Service from 20.12.2011

Conclusion from 16.12.2011

There are no proposals for presentation of new evidence

In the final word, the defender of the accused, Aleksandar Cvejić said:

In the final word the prisoner said

DECISION

Hearing is postponed for 24.02.2012 at 09.00. for the hearing of the witnesses.

Minutes taken by:

Prisoner:

Disciplinary

Commission:

x x x x x x x x x

Republic of Serbia

Ministry of Justice

Directorate for the Enforcement of Criminal Sanctions

Penitentiary Niš

No: 24-759/2011-01/3

Date: 06.03.2012

Niš

Pursuant to the Article 158 of the Law on the Enforcement of Criminal Sanctions /Official Gazette of the Republic of Serbia No 85/05 and 72/09) and Article 61 of the Rulebook on disciplinary offences, measures and treatment towards prisoners (Official Gazette of the Republic of Serbia No 59/06) the following is produced:

MINUTES

ON THE COURSE OF DISCIPLINARY PROCEDURE

Held on 06.03.2012, in front of Disciplinary Commission of Penitentiary in Niš, in the subject of disciplinary responsibility of prisoner M.A., at the proposal of Supervisor Z.N. from 11.11.2011. for grounded suspicion that he committed serious disciplinary offence from Article 145, Paragraph 1, Point 10 of the Law on the Enforcement of Criminal Sanctions

Hearings start at **10.00.**

Hearings are public

Present:

Prisoner against whom the procedure is conducted: **M.A.**

Submitter of the report Z.N. was properly invited

Disciplinary Commission

Deputy President of Disciplinary Commission: Mladenović Mirjana

Member: Krstić Miljan

Member: Radojković Nebojša

Minutes recorded by: Blagojević Zdenka.

In line with Article 161 of the Law on the Enforcement of Criminal Sanctions and Article 53 of the Rulebook on disciplinary offences, measures and treatment towards prisoners, the prisoners are informed that they are entitled to expert legal aid, and prisoner in the procedure says that he wants expert legal aid- Lawyer Cvejić Aleksandar.

Prisoners are taught about the right of use language and script.

Proposal for initiation of the procedure is read out and prisoner, after declaring whether he understands for what he is charged, gives the following statement about the statements from the proposal:

Prisoner M.A. said:

To the question of the president of the Commission, whether he was taken to doctor's, prisoner M.A. said that at 9.00 he was at doctor's Anita, for mental condition and that later, the same day, he went to the doctor's again around 23.30.

Statement given by the

prisoner

Evidence procedure:

Read out:

Proposal for initiation of Disciplinary Procedure from 11.11.2011.

Report from: 10.11.2011.

Official note of senior commander J.D. from 10.11.2011.

Prisoner's statement from 10.11.2011.

Medical report from 02.03.2012

Opinion of the Treatment Service from 20.12.2011

Conclusion from 16.12.2011

Disciplinary Commission brings a:

DECISION

To hear as witnesses the prisoners: M.M., M.A. and M.V.

Prisoner M.M. is not in state to testify, due to bad mental condition

Prisoner M.V. said: Bearing in mind that I had stroke I don't remember the given incident and I can not make a statement.

Statement given by prisoner

M.V.

Prisoner M.A. said: I did not attend the given incident and in that sense I can not make statement about that. I was in the prison hospital but I did not attend any incident and I did not hear any noise. To the question of A.M.'s attorney „Did he hear any noise? “Witness M.A. replies that he did not hear anything.

Statement Given by prisoner

M.A.

Proposal of attorney Cvejić Aleksandar to hear the senior commander J.D. is rejected.

There are no proposals for presentation of new evidence

In the final word, the defender of the accused, Aleksandar Cvejić said:

I think that there is no evidence that the prisoner committed the offence he is charged with and emphasizes that medical report was in line with the statement of the prisoner and that official note was not in line with medical report from 02.03.2011. bearing in mind that the prisoner has two bruises on the back part of the neck, which is illogical, bearing in mind the fall, as well as other injuries which were declared by senior commander J.D., were not in accordance with the injuries given in the medical report.

Attorney Cvejić

Aleksandar

In the final word the prisoner said

DECISION

Hearing is concluded.

Prisoner M.A., Personal Identification Number 8937 , for the committed severe offence from Article 145, Paragraph 1, Point 10 of the Law on the Enforcement of Criminal Sanctions, is imposed a disciplinary measure:

OF SOLITARY CONFINEMENT DURING WHOLE NIGHT AND DAY, IN DURATION OF 5 DAYS, WHOSE ENFORCEMENT IS CONDITIONALLY DELAYED FOR TWO MONTHS.

Minutes taken by:
Commission:

Prisoner:

Disciplinary

F. APPENDIX: Solitary confinement of prisoners (translated parts of the report)

21st General Report of the CPT/ Solitary confinement of prisoners/ disciplinary sanction
(www.cpt.coe.int/en/docsannual.htm)

Solitary confinement of prisoners

Introduction

53. Solitary confinement of prisoners is found, in some shape or form, in every prison system. The CPT has always paid particular attention to prisoners undergoing solitary confinement, because it can have an extremely damaging effect on the mental, somatic and social health of those concerned¹.

This damaging effect can be immediate and increases the longer the measure lasts and the more indeterminate it is. The most significant indicator of the damage which solitary confinement can inflict is the considerably higher rate of suicide among prisoners subjected to it than that among the general prison population. Clearly, therefore, solitary confinement on its own potentially raises issues in relation to the prohibition of torture and inhuman or degrading treatment or punishment. In addition, it can create an opportunity for deliberate ill-treatment of prisoners, away from the attention of other prisoners and staff. Accordingly, it is central to the concerns of the CPT and, on each visit, delegations make a point of interviewing prisoners in solitary confinement in order to examine their conditions of detention and treatment and to check the procedures for deciding on such placements and reviewing them. In this section of its General Report, the CPT sets out the criteria it uses when assessing solitary confinement. The Committee believes that if these criteria are followed, it should be possible to reduce resort to solitary confinement to an absolute minimum, to ensure that when it is used it is for the shortest necessary

¹ The research evidence for this is well summarised in Sharon Shalev's "A Sourcebook on Solitary Confinement" (Mannheim Centre for Criminology, London, 2008), available electronically at www.solitaryconfinement.org

period of time, to make each of the solitary confinement regimes as positive as possible, and to guarantee that procedures are in place to render the use of this measure fully accountable.

54. The CPT understands the term “solitary confinement” as meaning whenever a prisoner is ordered to be held separately from other prisoners, for example, as a result of a court decision, as a disciplinary sanction imposed within the prison system, as a preventative administrative measure or for the protection of the prisoner concerned. A prisoner subject to such a measure will usually be held on his/her own; however, in some State she/he may be accommodated together with one or two other prisoners, and this section applies equally to such situations.

As regards more specifically the solitary confinement of juveniles, a practice concerning which the CPT has particularly strong reservations, reference should also be made to the comments made by the Committee in its 18th General Report².

This section does not apply to the isolation of prisoners for medical reasons, as the grounds for such a measure are of a fundamentally different nature.

The principles involved

55. Solitary confinement further restricts the already highly limited rights of people deprived of their liberty. The extra restrictions involved are not inherent in the fact of imprisonment and thus have to be separately justified. In order to test whether any particular imposition of the measure is justified, it is appropriate to apply the traditional tests enshrined in the provisions of the European Convention on Human Rights and developed by the case-law of the European Court of Human Rights. The simple mnemonic PLANN summarises these tests.

(a) Proportionate: any further restriction of a prisoner’s rights must be linked to the actual or potential harm the prisoner has caused or will cause by his or her actions (or the potential harm to which he/she is exposed) in the prison setting. Given that solitary confinement is a serious restriction of a prisoner’s rights which involves inherent risks to the prisoner, the level of actual or potential harm must be at least equally serious and uniquely capable of being addressed by this means. This is reflected, for example, in most countries having solitary confinement as a sanction only for the most serious disciplinary offences, but the principle must be respected in all uses of the measure. The longer the measure is continued, the stronger must be the reason for it and the more must be done to ensure that it achieves its purpose.

(b) Lawful: provision must be made in domestic law for each kind of solitary confinement which is permitted in a country, and this provision must be reasonable. It must be communicated in a comprehensible form to everyone who may be subject to it. The law should specify the precise circumstances in which each form of solitary confinement can be imposed, the persons who may impose it, the procedures to be followed by those persons, the right of the prisoner affected to make representations as part of the procedure, the requirement to give the prisoner the fullest possible reasons for the decision (it being understood that there might in certain cases be reasonable justification for withholding specific details on security-related grounds or in order to protect the interests of third parties), the frequency and procedure of reviews of the decision and the procedures for appealing against the decision. The regime for each type of solitary confinement should be established by law, with each of the regimes clearly differentiated from each other.

² 10. See CPT/Inf (2008) 25, paragraph 26.

(c) Accountable: full records should be maintained of all decisions to impose solitary confinement and of all reviews of the decisions. These records should evidence all the factors which have been taken into account and the information on which they were based. There should also be a record of the prisoner's input or refusal to contribute to the decision-making process. Further, full records should be kept of all interactions with staff while the prisoner is in solitary confinement, including attempts by staff to engage with the prisoner and the prisoner's response.

(d) Necessary: the rule that only restrictions necessary for the safe and orderly confinement of the prisoner and the requirements of justice are permitted applies equally to prisoners undergoing solitary confinement. Accordingly, during solitary confinement there should, for example, be no automatic withdrawal of rights to visits, telephone calls and correspondence or of access to resources normally available to prisoners (such as reading materials). Equally, the regime should be flexible enough to permit relaxation of any restriction which is not necessary in individual cases.

(e) Non-discriminatory: not only must all relevant matters be taken into account in deciding to impose solitary confinement, but care must also be taken to ensure that irrelevant matters are not taken into account. Authorities should monitor the use of all forms of solitary confinement to ensure that they are not used disproportionately, without an objective and reasonable justification, against a particular prisoner or particular groups of prisoners.

Types of solitary confinement and their legitimacy

56. There are four main situations in which solitary confinement is used. Each has its own rationale and each should be viewed differently:

.....

(b) Solitary confinement as a disciplinary sanction

Withdrawal of a prisoner from contact with other prisoners may be imposed under the normal disciplinary procedures specified by the law, as the most severe disciplinary punishment. Recognising the inherent dangers of this sanction, countries specify a maximum period for which it may be imposed. This can vary from as little as a few days to as much as a month or more. Some countries allow prison directors to impose a given maximum period, with the possibility for a judicial body to impose a longer period. Most countries – but not all – prohibit sequential sentences of solitary confinement.

Given the potentially very damaging effects of solitary confinement, the CPT considers that the principle of proportionality requires that it be used as a disciplinary punishment only in exceptional cases and as a last resort, and for the shortest possible period of time. The trend in many member States of the Council of Europe is towards lowering the maximum possible period of solitary confinement as a punishment. The CPT considers that the maximum period should be no higher than 14 days for a given offence, and preferably lower³. Further, there should be a prohibition of sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period. Any offences committed by a prisoner which it is felt call for more severe sanctions should be dealt with through the criminal justice system.

.....

³ The maximum period should certainly be lower in respect of juveniles

The decision of placement in solitary confinement: procedures and safeguards

57. In order to ensure that solitary confinement is only imposed in exceptional circumstances and for the shortest time necessary, each type of solitary confinement should have its own distinct process for applying and reviewing it. The CPT outlines here what it considers to be the appropriate processes:

.....

(b) Solitary confinement as a disciplinary sanction

The reason for the imposition of solitary confinement as a punishment, and the length of time for which it is imposed, should be fully documented in the record of the disciplinary hearing. Such records should be available to senior managers and oversight bodies. There should also be an effective appeal process which can re-examine the finding of guilt and/or the sentence in time to make a difference to them in practice. A necessary concomitant of this is the ready availability of legal advice for prisoners in this situation.

Prisoners undergoing this punishment should be visited on a daily basis by the prison director or another member of senior management, and the order given to terminate solitary confinement when this step is called for on account of the prisoner's condition or behaviour. Records should be kept of such visits and of related decisions.

.....

Conclusion

64. The aim of the CPT in setting out these standards is to minimise the use of solitary confinement in prisons, not only because of the mental, somatic and social damage it can do to prisoners but also given the opportunity it can provide for the deliberate infliction of ill-treatment. The CPT considers that solitary confinement should only be imposed in exceptional circumstances, as a last resort and for the shortest possible time.

Prisoners undergoing solitary confinement should be accommodated in decent conditions. Further, the measure should involve the minimum restrictions on prisoners consistent with its objective and the prisoner's behaviour, and should always be accompanied by strenuous efforts on the part of staff to resolve the underlying issues. More specifically, regimes in solitary confinement should be as positive as possible and directed at addressing the factors which have made the measure necessary. In addition, legal and practical safeguards need to be built into decision-making processes in relation to the imposition and review of solitary confinement.

Ensuring that solitary confinement is always a proportionate response to difficult situations in prisons will promote positive staff-prisoner interaction and limit the damage done to the very persons who are often already among the most disturbed members of the inmate population.

..... G. Recapitulation.....

During representation in disciplinary procedures and in all the contacts with prisoners on that occasion, the following was observed:

- Existence of violation of prisoners' rights (violation of right to defense –Article 158 Of the Law on the Enforcement of Criminal Sanctions and Article 10 of the Rulebook on disciplinary offences...; violation of right to instructions on the right to legal defender and possibility of later use of personally written statement written right after the incident, violation of right to effective legal means);
- In all the procedures except for one, the most severe measure was imposed - solitary confinement. This is contrary to both national legislation and European Prison Rules which recommend that the solitary confinement may be imposed only in exceptional cases and for a certain period of time which must be as short as possible;
- Appeal to the decision of disciplinary commission does not delay the enforcement which makes the submission of appeal on decision on solitary confinement measure senseless, because once enforced, this measure cannot be brought back in previous condition;
- Evidence on use of coercive measures and medical reports on examination of the person after use of coercive measures are not in compliance neither with the factual description of the incident nor with the statement of the defendant. Injuries caused by use of coercive measures are not completely registered and do not match the severity of eventual disciplinary offence;
- Experience from the practice showed that in cases when the attorney (lawyer) appears at the session of disciplinary commission, the session is delayed, which causes unneeded expenses to a prisoner, which ultimately leads to de-stimulation of prisoners to engage attorneys for disciplinary procedures.

Conclusion:

1. All previously exposed points to existence of certain lacks in the system of initiating and conducting disciplinary procedures, which as a consequence, besides decrease of some of the existing rights of prisoners anticipated by law, may influence that sanctioning and prevention of torture and other humiliating actions are less successful. This is realized in a way that, due to numerous omissions and non-efficiency of the system of disciplinary procedures, prisoners unwillingly report cases of ill-treatment because they don't believe the possibility of positive outcome.
2. Use of force, contrary to the Law on the Enforcement of Criminal Sanctions and European Prison Rules, was not applied as ultimate measure and in the shortest duration, but in most cases as a first measure and in completely undefined duration, which depends of the fact who applies the force, not from the circumstances of the incident.

