



CPT/Inf (2009) 2

**Response of the Government of Serbia  
to the report of the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)  
on its visit to Serbia**

**from 19 to 29 November 2007**

The Government of Serbia has requested the publication of this response. The report of the CPT on its November 2007 visit to Serbia is set out in document CPT/Inf (2009) 1.

Strasbourg, 14 January 2009



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## **Ministry of Human and Minority Rights**

### **RESPONSE**

**to 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 19 to 29 November 2007**

**Belgrade  
September 2008**

## **CO-OPERATION**

1. In compliance with the principle of cooperation stipulated in Article 3 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Republic of Serbia aims at support of and assistance to activities of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment during the visit of their representatives. The Law on Ministries of the Republic of Serbia of 5<sup>th</sup> July 2008 designated the Ministry of Human and Minority Rights to coordinate the cooperation of the Republic of Serbia with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which had been up to specified date pursued by the Office for the Human and Minority Rights of the Republic of Serbia.

*1bis.* The Republic of Serbia accepts the Committee recommendations and the guidelines for own development and directions to achieve the set standards in treatment of persons deprived of liberty and include them into short-term and long-term plans of their line ministries (paragraph 7 of the Report). The Administration for the Enforcement of Penal Sanctions of the Ministry of Justice makes great efforts, with the financial and human resources available, to refurbish the current prison facilities, build new facilities for placement of persons deprived of liberty pursuant to the European standards, establish an effective system of exercising and protection of rights of convicted persons, develop modern programs and treatments, provide for training of employed staff and organize enforcement of the sanctions that are alternative to imprisonment (paragraph 5 of the Report).

*1ter.* In compliance with the emergency requirements that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment set in writing for the Republic of Serbia, based on Section 8, paragraph 5 of the European Convention, immediately after completion of their second regular visit to the Republic of Serbia on 29 November 2007, i.e. 17 December 2007, the Office for the Human and Minority Rights of the Republic of Serbia proceeded as follows:

- Furnished the response of the Ministry of Justice to the Committee on 11<sup>th</sup> January 2008, including:
  - o plan to continue reconstruction of the Special Prison Hospital in Belgrade, and
  - o two complete medical files and post-mortem reports for the deceased X. in u Požarevac and Y. in the District Prison in Belgrade ( paragraph 9 of the Report);
- on 11 March 2008 the Liaison Officer of the Republic of Serbia for Cooperation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from the Office for the Human and Minority Rights of the Republic of Serbia furnished a detailed Action Plan to the Committee representatives in Strasbourg. The Plan written by the Ministry of Labor and Social Affairs of the Republic of Serbia detailed the improvement of placement of residents at the “Dr Nikola Šumenković” Institution in Stamnica, as required by the Committee (paragraph 8 of the Report);
- on 7 February 2008 representatives of the Office for the Human and Minority Rights of the Republic of Serbia visited the Stamnica Institution personally to convey to the competent persons the need to comply with international standards adopted by the Republic of Serbia for persons deprived of their liberty ( paragraph 8 of the Report),

- in the period July-August 2007 the Office for the Human and Minority Rights of the Republic of Serbia visited the penitentiaries in Sremska Mitrovica, Požarevac-Zabela, Požarevac (prison for women), Niš and Valjevo, as well as District Prisons in Belgrade (including the Special Prison Hospital), Vranje, Novi Sad and Novi Pazar. After the visits, two Reports were composed presenting observations on fulfillment of standards for placement and treatment and respect of rights of persons deprived of liberty. They were sent to the Administration for the Enforcement of Penal Sanctions of the Ministry of Justice of the Republic of Serbia. Both Reports, in Serbian, were furnished on 19 November 2007 to Mr. Mauro Palma, President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on the occasion of his meeting at the Office for the Human and Minority Rights of the Government of the Republic of Serbia.

#### Comments

- **The Serbian authorities are requested to ensure that, in the future, information on the CPT's mandate and powers is disseminated to all the authorities and staff concerned, and that visiting delegations are supplied on time with credentials which spell out this information (paragraph 5).**

2. In the period July-August 2007 the Office for the Human and Minority Rights of the Republic of Serbia visited the penitentiaries in Sremska Mitrovica, Požarevac-Zabela, Požarevac (prison for women), Niš and Valjevo, as well as District Prisons in Belgrade (including the Special Prison Hospital), Vranje, Novi Sad and Novi Pazar. On the occasion, they introduced the management and staff with the operation and activities of the representatives of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Ministry of Justice of the Republic of Serbia had already published a brochure on the Committee, its mandate, activities and rights. The brochure was furnished to the aforementioned institutions. On 28 September 2007 the Office for the Human and Minority Rights of the Republic of Serbia and the Administration for the Enforcement of Penal Sanctions organized a full day workshop with all managers of penitentiary institutions and district prisons in the Republic of Serbia introducing them with the planned visit of the Committee of the Council of Europe and its scope of work, rights and duties as well as impact. The Internal Control Sector of the Ministry of Interior Affairs of the Republic of Serbia plans to continue cooperation with OSCE to the end of this year and in 2009 with training of managerial staff. This training entails their learning about the operations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and a similar UN Committee in the light of the fact that in September 2006 Serbia ratified the Option Protocol to the UN Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. In early 2008, in relation to the regular visits of the national and international experts to the detention facilities in the Republic of Serbia, the Ministry of Justice of the Republic of Serbia submitted a request to the National Parliament of the Republic of Serbia to set up a committee, without delay, as stipulated in the Law on Enforcement of Penal Sanctions of the Republic of Serbia as a form of parliamentary oversight of the operations of the Administration for the Enforcement of Penal Sanctions of the Republic of Serbia. The Committee would be composed of five members and could pursue unsupervised talks with inmates and staff of the institutions.

*2bis.* Issuance of temporary accreditations for the members of the Committee delegation for their stay in the Republic of Serbia would be useful and practical solution, which was missing during the previous visit.

- **The Serbian authorities are requested to take all necessary measures to prevent any repetition of acts of the kind referred to in paragraph 6 of the report during future CPT visits (paragraph 6).**

3. Referring to the statements presented in the Report (paragraph 6), the Ministry of Justice of the Republic of Serbia underscores that the management of the Požarevac-Zabela institution did not intend to misguide the delegation, as stated in the Report. Instead, it was a misunderstanding. The management of the Požarevac-Zabela Correctional Institution explained to the delegation that the cellar rooms had not been used for permanent accommodation of inmates for more than 6 months. They also stated that they placed there persons that had been transferred from the Niš correctional facility (decisions on transfer corresponded to the dates of placement of these persons) since there were no rooms to place them in the seventh pavilion. Referring to the statement that the staff of the Požarevac-Zabela Correctional Institution tried to change the information in the records of the use of force, we hereby inform you that the Penitentiary has all records on the use of these measures, but in the 2000 riots, records of the use of force were destroyed. The records have been re-established, but kept only in the folders without entering them into the Register of Reports on Use of Force, which was set up only in 2006 ( paragraph 6 of the Report).

- **Any kind of intimidating or retaliatory action against a person before or after he/she has spoken to a delegation of the Committee would be totally incompatible with the obligations of Parties to the Convention (paragraph 6).**

4. On 22 February 2008 representatives of the Office for Human and Minority Rights of the Republic of Serbia visited the Požarevac-Zabela Correctional Institution and, following the Committee suggestions, conveyed to the institution management that different, i.e. less favorable treatment of inmates who had individual interviews with the Committee delegation during the visit would not be allowed (paragraph 6 of the Report). On the meeting held on 11 March 2008 in Strasbourg, the Liaison Officer of the Republic of Serbia for cooperation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment reported to the Committee accordingly.



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

### **Preliminary remarks**

#### **Recommendations**

- **The Serbian authorities to finalize as soon as possible the reform of the legislative framework for deprivation of liberty by law enforcement agencies. All law enforcement officials should be given appropriate training on the new laws and their practical implications (paragraph 12).**

5. The presented recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is actually one of the priorities of the Ministry of Interior Affairs of the Republic of Serbia that is continuously pursuing preparation of new and modern regulations within its scope of work in an effort to consistently comply with international standards in treatment of persons deprived of liberty in the Republic of Serbia. As you already know, in November 2005 we adopted the Law on Police which is fully compliant with terms and requirements of the Council of Europe since it has incorporated reform provisions in terms of re-definition of police powers and in terms of implementation of the European Code of Police Ethics. It has been welcomed by both OSCE and the Council of Europe when the Law was drafted, since it was based on the standards set in the European Convention on Human Rights (1950) and Protocols to that Conventions, Declaration on Police (1979), European Code of Police Ethics adopted by the Council of Ministers of the Council of Europe on 19 September 2001, and other international sources relevant for providing the legal grounds for police work.

*5bis.* The whole reform process is continued and in the process the Ministry of Interior Affairs of the Republic of Serbia focuses not only the collaboration with other related ministries and governmental bodies, but with the National Parliament of the Republic of Serbia and its bodies, as well. This is a comprehensive procedure requiring long preparations in order to attain the desired goal. Therefore, it is very important that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has issued pertinent recommendations which are fully in line with our intentions, which will make it possible to accelerate completion of the legislative reform for deprivation of liberty in certain aspects, to be applied by law enforcement services.

*5ter.* According to legislative development and implementation of adopted national regulations, the Ministry of Interior Affairs of the Republic of Serbia will plan and develop programs and projects for training, additional training for the staff, as it has been done so far, alone or in cooperation with OSCE.

### Request for information

- **Clarification of whether the periods of 4 and 8 hours (mentioned in Section 226 of the Code of Criminal Procedure) are included in the 48-hour period by which a detained person has to be brought an investigating judge (paragraph 11).**

6. Section 226, paragraph 3 of the Code of Criminal Procedure of the Republic of Serbia stipulates that gathering information from a person may take as long as it is necessary to obtain the required information, but no longer than 4 hours. Besides, Section 229 of the same law underscores that:

1. A person deprived of liberty and a suspect, may be detained longer by an internal affairs body only exceptionally (Section 226, paragraph 1 of the Code of Criminal Procedure) or for interrogation, but no longer than 48 hours after deprivation of liberty or responding to summons.
2. The internal affairs body shall issue a decision immediately, within a 2-hour term, and serve it to the detainee; the decision shall specify the crime of which the person is suspected, grounds for suspicion, day and hour of deprivation of liberty or responding to summons, as the time when detention is started.
3. The suspect and his legal council are entitled to appeal, which is immediately furnished to the investigating judge. The investigating judge shall rule on the appeal four hours after the receipt thereof at the latest. The appeal does not cancel the decision enforcement.

*6bis.* Section 226 of the Code of Criminal Procedure of the Republic of Serbia regulates, in fact, the interrogation procedure, i.e. collection of information, its duration, and the burden of time to the interrogated person, his/her legal council and officials conducting the interrogation. Thus, the Section covers only collection of information time-wise, and relates to all persons detained pursuant to Section 229 of the Code of Criminal Procedure of the Republic of Serbia and others.

*6ter.* Ministry of Internal Affairs of the Republic of Serbia underscores that the internal affairs bodies fully comply with Section 226, in relation to Section 229 of the Code of Criminal Procedure, i.e. that a suspect may be detained for no longer than 48 hours for interrogation before his/her appearance before the investigating judge.

### **III-treatment**

#### Recommendations

- **Any non-standard issue objects to be immediately removed from all police premises where persons may be held or questioned. Any such items seized during criminal investigations should be entered in a separate register, properly labeled (identifying the case to which they refer) and kept in a dedicated store (paragraph 15).**

7. The Rulebook on Police Work of the Ministry of Interior Affairs of the Republic of Serbia, stipulates that objects seized in the course of criminal investigations are recorded in a report. Police officers shall hand over all temporarily seized items that are security risks (weapons, explosives and other dangerous substances) to trained experts, pursuant to regulations on their safekeeping. Also, Section 16 of the Instructions on Types of Records and Mode of Record Keeping on Sentenced and Remand Prisoners applied by the Ministry of Internal Affairs of the Republic of Serbia stipulates mandatory keeping of the Records of Seized Items.

*7bis.* Pursuant to Recommendation of the pertinent Committee of the Council of Europe, the Commission of the Ministry of Interior Affairs of the Republic of Serbia for monitoring of implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited some of the regional police headquarters premises (for the city of Belgrade, Bor, Zaječar, Sremska Mitrovica, Niš and Kragujevac) and some of their respective organizational units in order to find all items and objects that do not belong to standard police equipment and to have direct insight into the places where these are stored.

- **Police officers already in service to receive systematic ongoing training based on the new curriculum (paragraph 16).**

8. Each year, the Ministry of Internal Affairs passes a training curriculum for law enforcement officers. The curriculum covers certain areas, focusing the areas of human rights, lawfulness of operation of police officers and the like.

*8bis.* Each year, the Ministry of Internal Affairs passes a training curriculum for law enforcement officers, which is enacted by the Minister of Internal Affairs. The curriculum covers certain topics in the area of human rights, police ethics, communications relating to police work, and legal grounds for the use of police powers.

*8ter.* The Commission of the Ministry of Interior Affairs of the Republic of Serbia for monitoring of implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has undertaken a task of writing a manual (brochure) on prevention of torture and protection of rights of persons deprived of their liberty. The manual will, after pertinent approvals are obtained, be used as reference material for police staff training in the area. Activities of the Commission in the oncoming period will be focused on organization of training courses for police officers to elaborate these topics.

- **Appropriate action to be taken by judges whenever there are indications that ill-treatment by the police may have occurred, as recommended in paragraph 40 of the report on the CPT's 2004 visit. If necessary, the relevant legislation should be amended accordingly (paragraph 19).**

9. As stated above, the recommendations issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment are binding for the Republic of Serbia and the Republic actively strives to adopt and implement these recommendations. This is also the case with the recommendation presented in paragraph 20 of the previous Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that the Republic of Serbia has not yet manage to implement. The recommendation, thus, has not been neglected, it is still in place, but requires more complex efforts directed to coordinated action of several line ministries in the Republic of Serbia and, accordingly, some more time.

- **The Record drawn up following the medical examination of newly-arrived remand prisoners to contain: (i) a full account of statements made by the person concerned which are relevant to the medical examination (including his description of his 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 doctor's conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegations made and the objective medical findings. Whenever injuries are recorded which are consistent with allegations of ill-treatment made, the record should be systematically brought to the attention of the relevant prosecutor. Further, the results of every examination, including the above-mentioned statements and the doctor's conclusions, should be made available to the remand prisoner and his lawyer. The same approach should be followed whenever a prisoner is brought back to prison by the police, after having participated in investigative activities (paragraph 20).**

10. On each occasion the Republic of Serbia has welcomed the recommended modalities or means, particularly if they come from competent international bodies, in order to improve treatment of persons deprived of liberty, particularly their health. The recommendation referred to by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment specifies concrete measures and advice on how to compose a protocol/report of the admission examination of a remand prisoner. The suggested introduction of a standardized template for medical examination of remand persons with specifications of the European Committee could only contribute to better treatment of these persons.

#### Comments

- **Continued determined action is needed to combat ill-treatment by the police; in particular, all allegations or other indications of physical ill-treatment by law enforcement officials must be duly investigated and, if appropriate, the officials concerned punished accordingly (paragraph 16).**

11. The Ministry of Internal Affairs of the Republic of Serbia highlights the importance of lawfulness of work and treatment, correct and professional attitude to citizens and compliance with the code of ethics. Accordingly, energetic measures are undertaken to prevent, detect and combat all kinds of abuse, crime and misdemeanor, exceeding the powers, lack of discipline and other adverse behaviors of police officers that tarnish the Ministry reputation. The Instructions on Code of Ethics and Mode of Operation in Police Work stipulates that nobody in the Ministry has the power to order, perform, provoke or tolerate torture or any other form of cruel and inhuman treatments degrading for human personality or any other action that may jeopardize the right to life, freedom, personal safety, respect for privacy and family life, assembly or any other right or freedom granted by the European Convention on Human Rights. Members of the Ministry of Interior of the Republic of Serbia witnessing any prohibited act are obliged to report the case to their superiors, internal control and external civil oversight bodies. From the enforcement date, the Instructions are an integral part of the training curriculum for members of the Ministry of Internal Affairs.

- **It is important to ensure that all persons entrusted with carrying out investigative acts concerning complaints against police are not from the same service as those who are the subject of the investigation. Ideally, those entrusted with the operational conduct of the investigation should be completely independent of the agency implicated (paragraph 17).**

12. The Rulebook on Complaints Resolution Procedure of the Ministry of Interior Affairs of the Republic of Serbia came into force on 1 September 2006, and pursuant to Section 180 of the Law on Police of the Republic of Serbia it regulates the procedure of resolution of complaints lodged against police officers by individuals when they believe that their rights or liberties have been violated by an unlawful or irregular action of a police officer. The Minister of Internal Affairs of the Republic of Serbia passed a decision to set up 27 boards as the second instance bodies in the process of complaint resolution; 26 of these are situated in the local police administrations and one at the Ministry of Interior Affairs headquarters. They commenced their operations in January 2007. The complaints are resolved by a 3-member panel at the Ministry Seat: (1) Head of Police Internal Control Division or other authorized representative of the Division empowered by the Division Head, (2) representative of police empowered by the Minister, and (3) representative of the public. The Minister appoints and dismisses the representative of the public that participates in resolution of complaints against the operation of police officers in the seat upon advice of professional community and civil sector. The representative of the public is appointed for a 4-year term and may be re-appointed. The Bureau for Complaints and Petitions in the Minister's Office is in charge of regular and unhindered operation and streamlined practice and procedures relating to complaints, as well as rectification of all problems and ambiguities in the process. Pursuant to provisions of the Rulebook, any communication to the Ministry that is not a proper complaint (anonymous complaints to the police operations, petitions of legal entities without signature of an authorized representative, petitions not related to police operations, criminal charges, reports on violation of other regulations, applications, suggestions, proposals, comments etc.) is not processed in the complaint resolution procedure, but referred to pertinent organizational units of the Ministry of Interior Affairs.

- **The Serbian authorities are invited to introduce a uniform nationwide system for the compilation of statistical information on complaints, disciplinary sanctions, and criminal proceedings/sanctions against law enforcement officials (paragraph 18).**

13. PLEASE, REFER TO PARAGRAPH 21 OF THIS RESPONSE.

Request for information

- **In respect of 2007 and the first half of 2008:**
  - \* **The number of complaints of torture and other forms of ill-treatment made against police officers (with indication of the authority to which the complaints were made),**
  - \* **The number of disciplinary and criminal proceedings (pursuant to Sections 136 and 137 of the Criminal Code) which were instituted as a result of these complaints,**
  - \* **An account of the outcome of these proceedings, including disciplinary and criminal sanctions imposed (paragraph 18).**

14. In the course of 2007 citizens lodged 3250 complaints against the operation and behavior of the police officers in the Republic of Serbia. In 196 out of these complaints, faults of police officers were substantiated; in 794 no fault was confirmed. The procedures are in progress for 1447 complaints and 676 were referred to the Complaints Board who found fault in the operation of police officers in 74 out of these cases. In the period January-April 2008 citizens lodged 892 complaints against operation and behavior of police officers. In 57 cases out of these fault of police officers was substantiated, in 183 no fault of police officers was found, 422 cases are still in progress, and 219 are referred to the Complaints Board who ruled fault in operation of police officers in 14 cases, etc. In 2008 citizens pressed charges to the Public Prosecutor's Office against 38 police officers of the Ministry of Internal Affairs for 24 criminal offences pursuant to Section 137 of the Criminal Code of the Republic of Serbia (ill-treatment and torture), and six criminal charges for six criminal offence pursuant to Section 136 of the Criminal Code of the Republic of Serbia (extortion of statement) etc.

14bis. Section 137 of the Criminal Code of the Republic of Serbia, in force as of 1 January 2006 stipulates the criminal offence of ill-treatment and torture. This criminal offence in its basic form implies the action of ill-treatment of others or treatment of others in humiliating and degrading manner and stipulates the imprisonment of up to one year. A more severe form of this crime – use of force, threat or any other unlawful form of inflicting pain of severe suffering to others aimed at extortion of confession, statement or any other information or intimidation or unlawful punishment of or if such act is performed with other motives based on any form of discrimination, the perpetrator shall be punished with imprisonment from six months to five years. The perpetrator is broadly defined, so that paragraph 3 of this Section stipulates that if the offence is committed by an official on duty such person shall be punished by imprisonment from three months to three years for the basic form of the offence and one to eight years for the latter form. In Section 136 the Criminal Code also stipulates the crime of extortion of statement. A provision of this Section stipulates that if an official on duty uses force or threat or other inadmissible means or inadmissible manner with the intent to extort confession or any other statement from an accused person, a witness, expert witness or other person shall be punished with imprisonment of three months to five years. There are reasonable grounds to believe that in the course of 2007 seven police officers employed by the Ministry of Internal Affairs of the Republic of Serbia committed five criminal offences of ill-treatment and torture, pursuant to Section 137 of the Criminal Code of the Republic of Serbia, and that three police officers in the first four months of 2008 committed two crimes stipulated in the same Section of the Criminal Code. No crimes stipulated in Section 136 of the Criminal Code have been committed by the police officers of the Ministry.

14ter. In 2007 and the first four months of 2008 the Ministry of Internal Affairs pressed charges *ex officio* and initiated disciplinary proceedings for severe violation of duty and pertinent decision of suspension from the Ministry until completion of the proceedings against seven police officials (six are members of the general police force) because of burden of proof that they committed the crimes of ill-treatment and torture stipulated in Section 137 of the Criminal Code of the Republic of Serbia. One of the charges was dismissed, indictment raised against two police officers, one verdict of acquittal was passed, and the other cases are in progress. Relating to criminal charges against police officers of the Ministry of Interior Affairs pressed by citizens directly to the Public Prosecutor's Office in the course of 2007, all seven referring to Section 136 of the Criminal Code of the Republic of Serbia were dismissed. Out of 24 charges invoking Section 137 of the Criminal Code 16 were dismissed; four cases are still in progress; two verdicts of conviction were passed, and in one case the appeal proceedings are in progress. In relation to the aforementioned criminal charges pressed by the citizens, the Ministry of Interior Affairs of the Republic of Serbia disciplinary proceedings have been initiated against four police officers. One of them was dismissed, two proceedings are in progress, and in one case a disciplinary measure (a fine) was pronounced.

## **Safeguards against the ill-treatment of persons deprived of their liberty**

### Recommendations

- **The Serbian authorities to take steps to ensure that the right of access to a lawyer for persons deprived of their liberty by the police applies effectively as from the very outset of their deprivation of liberty. Anyone who is under a legal obligation to attend and stay at a police establishment (e.g. as a “witness”) should also be granted the right of access to a lawyer (paragraph 23).**

15. The Code of Criminal Procedure of the Republic of Serbia stipulates that when provisions of Section 226 relating to pre-trial procedure and powers of pertinent bodies in such procedure are followed, the interior affairs officials may not interrogate citizens as defendants, witnesses or expert witnesses. Further, Section 226, paragraph 8 of the Code of Criminal Procedure of the Republic of Serbia stipulates that if an interior affairs body in the course of information collection finds that a summoned citizen may reasonably be a suspect, such citizen shall immediately be informed on the crime he/she is suspected of having committed and grounds for such suspicion, and that he/she need not respond to questions without his/her attorney present and that in case of remand he has to be informed on the rights stipulated in Section 5 of this Code:

- (1) A person deprived of liberty shall be immediately informed in his native language or a language he/she understands on the reasons for deprivation of liberty and associated burden of proof and his/her rights:
  - 1) that he/she need not give any statement and that everything that he/she says may be used as evidence against him/her;
  - 2) that he is entitled to legal aid of his choice;
  - 3) to communicate with his/her attorney in private;
  - 4) to have his attorney present during interrogation;
  - 5) to ask to have the time, place and every change of place of remand communicated without delay to persons of his/her choice, including diplomatic-consular representative of the country he/she is the citizen of, i.e. representative of pertinent international organization in cases of refugees and stateless persons;
  - 6) to communicate in private with diplomatic-consular representative of the country he/she is the citizen of, i.e. representative of pertinent international organization referred to in item 5) of this paragraph;
  - 7) to require to be examined by a medical doctor of his/her choice at any time, and if such medical doctor is unavailable by one at discretion of the detaining body;
  - 8) to initiate court proceedings to contest the legal grounds for deprivation of liberty;
  - 9) to require compensation of damages for un grounded deprivation of liberty.
- (2) A person deprived of liberty without pertinent court decision shall be escorted to the competent investigating judge without delay.
- (3) A person deprived of liberty may initiate proceedings in which the competent investigating judge will urgently examine the grounds for such deprivation of liberty and order immediate release in case of inadmissibility of such grounds.

- **Further efforts to be made to ensure that the system of legal aid for persons in police custody operates effectively; this should be done in co-operation with the relevant bar associations (paragraph 24).**

16. Cooperation between the bodies of the Republic of Serbia and Bar Associations is regulated under the 1998 Bar Law the Republic of Serbia. Section 17 of this Law stipulates that an attorney may freely decide whether he/she will provide legal aid to the client addressing him/her, except in cases specified in the law and in case when denial of such aid would be detrimental to the client. As to the Bar Associations, the 1999 Statutes of the Serbian Bar Association there are six lower associations situated in: Belgrade, Novi Sad, Zaječar, Kosovo & Metohija, Kragujevac, Niš, Požarevac, Čačak and Šabac. Both the Bar Law and Statute substantiate that the Bar Associations have public powers relating to professional services relating to legal representation in the Republic of Serbia.

16bis. Section 147, paragraph 2 of the Code of Criminal Procedure of the Republic of Serbia stipulates that in case of deprivation of liberty of an attorney, the pertinent internal affairs body i.e. court shall immediately, and by no means later than the following day, notify the competent bar association.

- **The Serbian authorities to issue specific instructions with a view to ensuring that a person taken into police custody has, as from the outset of his deprivation of liberty, an effective right to be examined by a doctor (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense) (paragraph 26).**  
**&**
- **Steps to be taken to implement CPT's earlier recommendations about the confidentiality of medical examinations of persons in police custody, the content of the record to be made by the doctor following the examination, and the availability of the record for the detained person and his/her lawyer (paragraph 26).**

17. The Criminal Procedure Law stipulates that when a person deprived of liberty is escorted to the investigating judge, he/she, his/her attorney, family member or a domestic partner (spouse or common law partner) may require that the investigating judge orders a medical examination. Such request may be filed by the public prosecutor, as well. If the request has been filed, the investigating judge shall decide accordingly and appoint a medical doctor to conduct the examination. The decision and records of the doctor's findings will be enclosed in the investigation file.



- **The Serbian authorities to issue a form setting out in a straightforward manner the rights of persons deprived of their liberty by the police (including the right of access to a doctor) and to ensure that the form is systematically given to such persons as from the outset of their deprivation of liberty (i.e. as from the moment the persons concerned are first obliged to remain with the police). Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case. The form should be made available in an appropriate range of languages (paragraph 27).**

18. Section 53 of the Police Law stipulates the police powers to detain persons. The remand is formalized in Decision on Remand stating that the person is entitled to appeal and right to notify the family or any other person at his/her discretion. Also, Section 29 and Section 30 of the Rulebook on the Use of Police Powers specifies the rights of any detainee that the police officer has to communicate to such person. Official note is made accordingly and signed by the detained person, as well.

18bis. Upon advice of the Committee that monitors implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and upon approval of the State Secretary of Ministry of Interior Affairs the commission shall propose a draft of a uniform template specifying the basic rights of detained persons.

- **Steps to be taken to ensure that juveniles do not make any statements or sign any documents related to the offence of which they are suspected without the benefit of a lawyer and/or a trusted person being present and assisting the juvenile (paragraph 29).**

19. The Law on Juvenile Offenders and Legal Protection of Minors is in force in the Republic of Serbia. Section 49 of the Law stipulates that any juvenile has to be assisted by a lawyer at the first interrogation and during the whole proceedings, as well. If a juvenile offender, his legal representative or relatives fail to commission a lawyer, a judge for juvenile offenders shall appoint one *ex officio*. Only layers with required special knowledge on the rights of the child and juvenile delinquency may be appointed. Further, Section 54 of Law on Juvenile Offenders and Legal Protection of Minors of the Republic of Serbia stipulates that any underage persons shall be summoned through their parents, i.e. legal representative, unless this is not possible due to the need for urgent action or other circumstances. At the same time, when a minor is escorted, pursuant to provisions of Section 135 of the Code of Criminal Procedure of the Republic of Serbia, this measure is conducted by police officers in plain clothes, taking care to do that in understated manner. Finally, referring to the opinion of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment presented in their last report addressed to the Republic of Serbia, Section 60 of the Law on Juvenile Offenders and Legal Protection of Minors stipulates that a law enforcement officer gathering information from a minor shall do so in the presence of a parent i.e. guardian of the minor. The information gathering is conducted by police officers for juvenile offenders. Police officers for juvenile offenders have acquired special knowledge in the area of the rights of the child and juvenile delinquency.

- **Steps to be taken to ensure that all persons deprived of their liberty by the police, who do not understand Serbian, are promptly provided with the services of an interpreter and, in particular, are not requested to sign any statements or other documents before the interpreter's services are provided (paragraph 30).**

20. Section 5 of the Code of Criminal Procedure of the Republic of Serbia clearly underlines the principle whereby a person deprived of liberty has to be immediately informed, in his/her language or a language that he/she understands, on the reasons for such deprivation and anything he/she is suspected of. In multiethnic Serbia, this provision is particularly important, since Section 14 of the Constitution of the Republic of Serbia guarantees special protection to ethnic minorities to provide for their complete equality and preservation of their identity. Section 79 (Right to preserve special features) of the Constitution of the Republic of Serbia stipulates that members of ethnic minorities have, *inter alia*, right to use their own language and alphabet and that in communities in which their share is significant any communication with public bodies, organizations entrusted with public powers, bodies of autonomous provinces and local government offices they may have administrative and judicial proceedings conducted in their respective languages. The 2002 Law on Protection of Rights and Liberties of Ethnic Minorities stipulates official use of language and alphabet of ethnic minorities in local government units, i.e. municipalities with over 15 percent of members of an ethnic minority, or the percentage is lower, but the language was in official use before adoption of the 2002 Law. In settlements with over 25 percent of ethnic minorities their language will be in official use, unless it has already become so on the municipal level in which the settlement is situated. In the Autonomous Province of Vojvodina the following languages are used in administrative and judicial proceedings: Croatian, Albanian, Romanian, Ruthenian and Slovakian. In 48 municipalities in the Republic of Serbia other languages are in use in addition to Serbian. Out of 45 municipalities in the Autonomous Province of Vojvodina only five municipalities have a single language in the official use.

- **Steps to be taken to ensure that whenever a person is deprived of his liberty by a law enforcement agency, for whatever reason, this fact is duly recorded without delay (paragraph 31).**
- &
- **Standard-format and comprehensive custody registers to be kept at each police establishment, containing information on all aspects of the person's custody and all the action taken in connection with it (paragraph 31).**

21. Section 76 of the Law on Police of the Republic of Serbia stipulates that the police, *inter alia*, keeps the register of all persons deprived of their liberty or whose liberty has been limited in any manner whatsoever (brining in, detaining, restriction of movement, deprivation of liberty, etc.). The Instructions for keeping the registers in police departments and other police units enacted by the Minister of Interior Affairs of the Republic of Serbia stipulates that the police department on duty keeps the register of detained persons. The register includes the following information: full name of detained person and his/her address, date and duration of detention, date and time when the decision on detention is served, full name of the competent senior officer who made the decision on detention, legal grounds, measures taken towards the detainee, date and time of appeal, and pertinent decision.

- **The Serbian authorities to take steps to develop a system for independent monitoring of police detention facilities. To be fully effective, monitoring visits should be both frequent and unannounced. Further, the monitoring bodies should be empowered to interview detained persons in private and examine all issues related to their treatment (material conditions of detention; custody records and other documentation; the exercise of detained persons' rights, etc.) (paragraph 32).**

22. In early 2008, the Ministry of Justice of the Republic of Serbia submitted a petition to the Parliament to set up a Board as stipulated in the national Law on Enforcement of Penal Sanctions as a form of Parliamentary oversight of the Administration for the Enforcement of Penal Sanctions of the Republic of Serbia. The Board would be composed of five members and entitled to conduct unsupervised interviews with inmates and staff of the institutions. Experiences gathered by the Board may be used to set up another audit and oversight mechanism for police detention facilities, so that the Ministry of Interior Affairs of the Republic of Serbia eagerly expect the results of the Board of the Serbian Parliament for Oversight of the Administration for the Enforcement of Penal Sanctions.

- **The return of remand prisoners to police custody – for whatever purpose – to be only sought when it is absolutely unavoidable and be subject to the authorization of the relevant prosecutor/judge. Further, the transfer of remand prisoners to and from police establishments should be duly recorded (paragraph 33).**

23. This recommendation of the esteemed Committee of the Council of Europe is not quite clear. Namely, after completion of police custody and transfer of a person deprived of liberty to court remand facility, pursuant to our legal procedure, the person becomes and remains under the jurisdiction of the Ministry of Justice of the Republic of Serbia and its bodies until the proceedings stipulated in the Code on Criminal Procedures have been completed. Return of such persons to police custody is out of the question. Such course of action is completely unknown in the practice of the Republic of Serbia.

#### Request for information

- **Clarification from the Serbian authorities, in the light of the information provided to the CPT's delegation by a criminal police officer at Bor District Police Unit (that the notification of a person's custody to his next-of-kin would be normally only be done through the person's lawyer) (paragraph 22).**

24. As to the required clarification of the information that the Committee delegation received from a criminal police officer at Bor District Police Unit, that it is customary that the next-of-kin be notified on a person's custody through his lawyer only, we advise you that Section 5 of the Code of Criminal Procedure stipulates that any person deprived of liberty shall immediately be informed on his/her rights and that persons he/she designates shall be notified accordingly. We assure you that this provision is complied with in practice.

- **Confirmation that a request by a person in police custody to be examined by a doctor of his own choice must be immediately granted (paragraph 25).**

25. We cannot confirm that a request of a person in police custody to be examined by a doctor of his own choice must be immediately granted, but such requests are granted whenever objective circumstances make it possible. We remind you, however, that Section 228 paragraph 7 of the Code of Criminal Procedure stipulates that the investigating judge decides in the matter of appointing a doctor to examine a person deprived of liberty.

- **Comments of the Serbian authorities on the procedure of “informative talks” (paragraph 28).**

26. As to the comments on the informative talks, we highlight that these are completely legitimate procedures for information gathering in the manner stipulated in the Code of Criminal Procedure of the Republic of Serbia. Namely, Section 226 of this Code stipulates summoning of persons to collect information, i.e.:

(1) Internal affairs officials may summon citizens for information gathering. The summons shall specify the reasons for such summons and the capacity in which a person is summoned. Force may be used to bring the summoned person in only if the person not responding to summons was previously warned accordingly.

(...)

(4) Information may not be gathered from citizens by the use of force.

(...)

(6) A person may be summoned again for information gathering on the circumstances of another crime or offender, but may not be re-summoned and brought in by force for information gathering on the same crime.

(7) When an internal affairs body collects information from persons reasonably suspected of having committed a crime or takes actions against such person in the pre-criminal procedure stipulated in this Code, such person may be summoned in the capacity of a suspect. The summons shall state that the person is entitled to a lawyer.

- **Comments of the Serbian authorities on several cases of juveniles who had been held at the Metropolitan Police Headquarters in Belgrade and had been interviewed by inspectors from the criminal police department, without the knowledge of their colleagues from the department of juvenile police (paragraph 29).**

27. The cases in question when the Metropolitan Police Headquarters held juveniles and inspectors of the criminal police department interrogated them without the knowledge of their colleagues from the department of juvenile police were cases of serious crimes (such as murder); specially selected criminal police inspectors with long experience with juveniles conducted the interrogations, which is in compliance with the current Instructions on Treatment of Minors.

27bis. The Commission of the Ministry of Interior Affairs of the Republic of Serbia for monitoring of implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited the Metropolitan Police Headquarters in Belgrade. On the occasion, it was noted that both the police officers in other departments of the Metropolitan Police Headquarters and some staff of other departments have pertinent certificates for the treatment of juvenile offenders and juvenile victims of crime, i.e. that they have, like the staff of the Juvenile Justice Department attended the same training in the area of the rights of the child, juvenile delinquency and criminal legal protection of minors. The main purpose of this training was to empower the police staff with special knowledge and skills needed for treatment of minors, in the light of urgent nature of treatment of minors and distribution of powers and competences among the Metropolitan Police Headquarters and other organizational units in the City of Belgrade.

27ter. The Commission has confirmed that at the Metropolitan Police Headquarters and Department for Crimes against Property two staff have the certificates for treatment of juvenile delinquents. At the Department for Violent and Sexual Crimes and Homicide the Commission has confirmed that two staff have the certificates for treatment of juvenile delinquents. Further, at the Anti-drug Department eight staff have the certificates for treatment of juvenile delinquents, while at the Department for Juvenile Delinquency 23 staff have the certificates.

### **Conditions of detention**

#### Recommendations

- **The Serbian authorities to step up their efforts to improve material conditions in police cells. More specifically, the following measures should be included in the action plan referred to in paragraph 36 of the report and implemented as a matter of priority:**
  - \* **ensure that all police cells where persons may be held overnight are of a reasonable size for their intended occupancy (i.e. at least 6 m<sup>2</sup> for single cells, and at least 4 m<sup>2</sup> per person in multi-occupancy cells),**
  - \* **improve in-cell lighting (access to natural light and artificial lighting), ventilation and heating,**
  - \* **ensure that all cells used for overnight detention are equipped with a means of rest suitable for such stays (e.g. a bed or a sleeping platform), and that persons kept in custody overnight receive a clean mattress and blankets,**
  - \* **offer food, including at least one full meal, at appropriate intervals to detained persons, this implies that police establishments should be allocated a specific budget for this purpose;**
  - \* **ensure that the toilet and washing facilities are in a good state of repair (paragraph 36).**

28. As to the part of the Report relating to the size of rooms for detention, light and ventilation, we hereby inform you that the Police Administration in cooperation with the Logistic Support Administration submitted a draft project for Extension and Refurbishment of the Detention Rooms, in compliance with the current regulation and international standards.

- **The very small cells at Indjija Police Station and at Zaječar District Police Unit to be taken out of service (paragraph 36).**  
**&**
- **The cell at Negotin Police Station (referred to in paragraph 35 of the report) to be taken out of service until such time as it is equipped with a proper heating system (paragraph 36).**  
**&**

Comments

- **The Serbian authorities are invited to address the shortcomings observed at Sremska Mitrovica District Police Unit (paragraph 37).**

29. In compliance with the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on serious shortcomings of cells in District Police Units in Zaječar, Sremska Mitrovica, and the police stations in Indjija and Negotin, the Commission for monitoring of implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited the police units in Zaječar and Bor. Accordingly, the Commission suggested the rooms to be refurbished and optimum conditions provided for overnight stay in these premises. The Ministry of Internal Affairs of the Republic of Serbia makes great effort to refurbish the cells for overnight detention and make them up to the international standards and your recommendations. Substantiating the above, we inform you that the Police Administration in the Ministry in cooperation with the Logistic Support Administration submitted a draft project for Extension and Refurbishment of the Detention Rooms, in compliance with the current regulation and international standards, as well as the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, referred to in paragraph 36 of their Report.

\* \* \*

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

### **Preliminary remarks**

#### **Recommendations**

- **The Serbian authorities to redouble their efforts to combat prison overcrowding and, in so doing, to be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe Concerning Prison Overcrowding and Prison Population Inflation, Recommendation Rec(2003)22 on Conditional Release (Parole) and Recommendation Rec(92)16 of the European Rules on Community Sanctions and Measures (as revised by Recommendation Rec(2002)22), as well as by Recommendation 1245(1994) of the Parliamentary Assembly of the Council of Europe on the Detention of Persons Pending Trial (paragraph 39).**

30. In order to resolve the problem of prison overcrowding in penitentiary institution, in addition to refurbishment of the old and building of new facilities, the Administration for the Enforcement of Penal Sanctions prepared a draft Law on Amendments to the Law on Execution of Criminal Sanctions, the enactment of which is planned for late 2008. Amendments are proposed in the part relating to referral of convicted persons to penitentiary institutions. The new provisions stipulate control of admission of new convicts where the referral should take into account the number of available vacancies in the institutions, priority of enforcement in the light of the nature of the crime and pronounced sanction, as well as statute of limitations for enforcement of such sanction. In the process of convict referral the court shall co-operate with the Administration for the Enforcement of Penal Sanctions. This solution is not unknown in comparative law. Implementation of such provision would imply promptness and cooperation between the Administration and courts that refer convicts to penitentiary institutions, as well as establishment of the criteria for referral priority. This subject matter should be regulated in detail by pertinent by-laws.

30bis. Further, we expect the introduction of a system of alternative sanctions to replace short term imprisonment to reduce the population of inmates, i.e. the overcrowding problem. Recently, a trend of humanization of the penal practice and mitigation of retributive component of the sanction, particularly in cases of less serious crimes has emerged. In the Republic of Serbia execution of sanctions pronounced as alternative to imprisonment is entrusted to the Commissioner's Service at the Department for Treatment and Alternative Sanctions of the Administration for the Enforcement of Penal Sanctions. Establishment of the Commissioner's Service provides organizational conditions to execute the alternative sanctions effectively in practice. The Administration for the Enforcement of Penal Sanctions in cooperation with OSCE provided financial resources to establish the Commissioner's Service for Execution of Alternative Sanctions in the first half of 2008. The Service will cover the territory of the District Court in Belgrade with 15 Commissioners, mainly the existing staff of the Administration for the Enforcement of Penal Sanctions holding the posts of correctional officers in the institutions. These 15 commissioners have undergone a practical training organized by the Council of Europe Office in Belgrade. Rooms and technical equipment for the Commissioners' service operation have been provided. In 2009 employment of 15 more commissioners is planned to cover execution of alternative sanctions pronounced on the territories of 6 District Courts (Niš, Novi Sad, Kragujevac, Valjevo, Subotica and Leskovac). In parallel with the establishment of Commissioners Service in co-operation with the Council of Europe Office in Belgrade training of judges in the area is also in progress, together with raising the awareness of the public of the need to execute the sanctions in the community.

30<sup>ter</sup>. In February 2008 new by-laws were enacted in the area – Rulebook on Execution of Community Work and Rulebook on Execution of Suspended Sentences and Parole.

### **Ill-treatment**

#### Recommendations

- **The management of Požarevac-Zabela Correctional Institution to make use of all means at their disposal to decrease tension, in particular at the establishment's high security unit, Pavilion VII and the remand section. In addition to investigating complaints made by prisoners, this will require the regular presence of the establishment's senior managers in the detention areas (including in the remand section), their direct contact with prisoners, and the improvement of prison staff training (paragraph 42).**

31. We have fully complied with this recommendation. The Administration issued clear instructions to the correctional institutions to fully comply with provisions of the Law on Execution of Criminal Sanctions and Rulebook on Measures to Maintain Order and Safety in Institutions for Execution of Penitentiary Sanctions in Case of Use of Force (i.e. coercive measures). Also, within their regular training activities, the Training Center for the staff of the Administration for the Enforcement of Penal Sanctions focuses training of custodial staff in respect to the use of coercive means.

- **The management of Požarevac-Zabela Correctional Institution to deliver the clear message to custodial staff that physical ill-treatment of inmates as well as other forms of disrespectful or provocative behavior vis-à-vis prisoners are not acceptable and will be dealt with severely. A similar message should be given to staff at Belgrade District Prison. Further, prison staff at all three establishments should be reminded that the force used to control violent and/or recalcitrant prisoners should be no more than necessary and once prisoners have been brought under control, there can be no justification for their being struck (paragraph 42)**

32. The Administration for the Enforcement of Penal Sanctions of the Ministry of Justice has delivered a clear message to all institutions within the jurisdiction of the Administration, including the management of Požarevac-Zabela Correctional Institution that any excessive use of force will be subject to disciplinary sanctions pursuant to the current regulations.

- **Wooden sticks and iron rods to be removed without delay from the offices of custodial staff at Požarevac-Zabela and Sremska Mitrovica Correctional Institutions (paragraph 45).**

33. The objects found in the offices of custodial staff at the Požarevac-Zabela Correctional Institution residential facilities had been seized from convicts in the course of regular searches of the room and was removed promptly. At the Sremska Mitrovica Correctional Institution in the office of the Pavilion I commanding officer a part of the metal bed frame was noted from an inmate room that the convicts took out of their room immediately before the Committee delegation arrived to the Pavilion. The origin of the metal bed frame was explained to the delegation, and upon their recommendation removed from the commander's office. Similar objects were not found in other offices.



- **The Serbian authorities to take steps to bring the practice of using “coercive means” in prisons in line with the considerations set out in paragraph 46 of the report. In this context, it is also important to ensure that prosecutors and the Ministry of Justice’s Inspectorate are systematically notified of any use of physical force and “coercive means” by prison staff, and that they be particularly vigilant when examining such cases (paragraph 46).**

34. In the Sremska Mitrovica Correctional Institution, after each use “coercive means” the sentenced or remand prisoner is examined by the prison medical doctor, and undergoes medical examination two more times within 24 hrs. A member of the force using the coercive means makes a report on a pertinent form with the official note. Justification of coercive means is controlled and approved by the department head and head of security service, and the report signed by the Institution Head is submitted to the Operational Center in Belgrade. Any use of coercive means is registered in the Book and in the Remand Department, Enhanced Supervision Department and Pavilion III where the measure of isolation and restraint is used there is a special Register of Isolation and Restraint.

34*bis*. Committee recommendation relating to records of the use of coercive measures and medical examinations are fully accepted. Since the Supervision Department of the Administration for the Enforcement of Penal Sanctions has already identified the same problems on their regular rounds of these institutions, the draft Law on Amendments to the Law on Enforcement of Penal Sanctions introduces significant improvements in this area. Duty of the institutions in case of use of coercive measures against sentenced prisoners to submit separate reports of the security service and medical report to the institution head without delay has been highlighted. Mandatory parts of the medical report in compliance with the recommendations of the European Committee have been specified, so that it has to include a statement of the prisoner against whom the coercive measure has been used on the manner in which the injury was inflicted, medical findings and opinion of the doctor on the association of the injury, as described by the convict and objective findings. Further, the institution head is obliged to promptly inform the Director of the Administration for the Enforcement of Penal Sanctions on the use of coercive means and in parallel submits the report of the custodial staff and medical examination report. Measures will be taken to compose pertinent instructions to the custodial staff on precise records of the reasons for the use of coercive means and the use of extensive and comprehensive reporting, where such reports shall be always accessible to state bodies and officials that are entitled to such insight pursuant to statutory regulations.

34*ter*. Also, order will be issued to the Medical Care Service to keep in mind the Committee recommendations contained in paragraph 20 of the Report whenever they conduct medical examinations.

#### Comments

- **If it deemed necessary for prison staff to carry truncheons, they should be hidden from view (paragraph 45).**

35. The problem is resolved by keeping the truncheons in the prison staff rooms, and taking them and using them as required in each individual situation.

Request for information

- **The progress of the criminal investigation into the case of death of prisoner X. on 17 July 2005, and the investigation's outcome (paragraph 43).**

36. In the case of late X., who died in the course of serving his sentence in the Požarevac-Zabela Correctional Institution, the District Court in Požarevac decided that there were no grounds for investigation against the prison guard for infliction of severe bodily harm, but that there were reasonable grounds to press charges for abandonment of disabled person and gross negligence in service. The case was referred to the jurisdiction of the District Court in Požarevac in the part requiring investigation against the prison staff/guards, head of security service and institution head because of grounds for suspicion that they committed a crime of abandonment of a disabled person and a crime of gross negligence in service, where the charges were pressed by a lawyer of the deceased's mother. The competent court has not yet passed the decision on merits of the case.

- **The outcome of the disciplinary proceedings referred to in paragraph 44 of the report (paragraph 44).**

37. Referring to the events of 17 November 2007 (case of slapping a remand prisoner), disciplinary proceedings against a senior commander, B. has been finished and a disciplinary measure of no promotion in service for two years has been pronounced.

- **The following information for 2007 and the first half of 2008 in respect of all prisons in Serbia:**

- \* **the number of complaints of torture and other forms of ill-treatment made against prison staff (with an indication of the authority to which the complaints were made),**
- \* **the number of disciplinary and criminal proceedings (pursuant to Sections 136 and 137 of the Criminal Code) which were instituted as a result of these complaints,**
- \* **an account of the outcome of these proceedings, including disciplinary and criminal sanctions imposed (paragraph 44).**

38. In 2007 there were 322 complaints of inmates to the institution head for violation of rights or other irregularities experienced in the institutions. Out of these, 7 complaints related to ill-treatment by the institution staff. The total of 72 appeals to the decision of institutions' heads were filed to the Director of the Administration for the Enforcement of Penal Sanctions of the Ministry of Justice, out of which 7 for alleged ill treatment of sentenced prisoners.

38bis. The total of 24 charges were pressed to the Supreme Court, competent for actions pursuant to charges of sentenced persons against the final decision of the Administration that violates or restricts any statutory right to sentenced persons, out of which 7 for alleged ill-treatment of the convicted persons in the course of their serving the sentence. In three cases the merits of the case have been acknowledged and new proceeding were ordered due to incomplete establishments of the merits, and in 4 cases the charges were dismissed for lack of grounds.

38ter. Five disciplinary proceedings were raised against prison staff for exceeding their powers in treatment of sentenced prisoners. In three cases fines were pronounced, in one prohibited promotion in service for 2 years, and one case is still in progress. One case, relating to excessive use of coercive means, in addition to internal investigation conducted by the Administration for the Enforcement of Penal Sanctions was also referred to the competent internal affairs body. No criminal proceedings were initiated.

- **Clarifications as regards the instructions that had reportedly been issued recently by the Administration for the Enforcement of Penal Sanctions, not to record “light traumatic injuries” (paragraph 47).**

39. Information provided by the medical staff of the Požarevac-Zabela Correctional Institution that the Administration for the Enforcement of Penal Sanctions issued instructions not to record light traumatic injuries is completely untrue and in conflict with the Law on Enforcement of Penal Sanctions (Section 103, paragraph 1, point 6) stipulating the duty of keeping the records on injuries of the convicts.

### **Material conditions of detention**

#### Recommendations

- **A call system to be installed in refurbished cells at Belgrade District Prison (paragraph 48),**

40. Relating to the installation of a call system in prison rooms, we inform you that this is not included in the project documentation (which has been approved by all competent bodies), so that the communication of custodial staff is conducted through personal orders to the inmates. Nevertheless, both internal and external communications are provided through telephone system and the Administration for Execution of Penitentiary Sanction approval was requested to initiate public invitation to bid for the project so that as soon as the approval is received, this will be carried out.

- **The Serbian authorities to devise, as a matter of high priority, a comprehensive and fully budgeted refurbishment programme for Belgrade District Prison, comprising precise timetables. The aim of this programme should be, in particular, to remedy the current structural deficiencies of the prison’s main detention building and ensure that all the cells benefit from adequate access to natural light, artificial lighting, ventilations and heating; cells should also be equipped with a call system and sockets. The already refurbished sections of the Special Prison Hospital (see paragraph 85 of the report) could be used as a reference in the context of the refurbishment programme (paragraph 49).**

41. Relating to the structural deficiencies of the facilities for imprisonment and detention in the Belgrade District Prison great efforts are made to provide at least barely adequate conditions in the facility which is over 50 yrs old for accommodation of persons deprived of liberty, as substantiated by the Committee findings, but the process is slow and necessitates substantial financial resources and extreme organizational effort.

41bis. As to the Committee recommendation relating to the dilemma of whether to invest into the current facilities or build completely new facilities, the analysis has been performed and building of a new prison facility is the final solution. The objective deadline is set at 2021 because of various reasons associated with urban planning requirements and necessitated investment, so that we still have an obligation to continue refurbishment for improvement of the condition in the current institution.

- **Pending the completion of the refurbishment of Belgrade District Prison, strenuous efforts to be made immediately to:**
  - \* **reduce significantly the occupancy level in the cells, the objective being to comply with the standard of 4m<sup>2</sup> of living space per prisoner in multi-occupancy cells,**
  - \* **refurbish the toilets (including the provision of a partition) and showers, especially on the ground floor of the main detention building,**
  - \* **supply all inmates with appropriate bedding (including pillows), which should be cleaned at regular intervals, and a range of personal hygiene items and of products to clean their cells (paragraph 49).**

42. We completely agree with the Committee findings relating to the need for further refurbishment of the facility, particularly on the ground floor in the detention unit. However, the problem includes not only the ground floor area with single cells, but the need to refurbish most of the facility and that is why all the works cannot be undertaken at once. Organization-wise, it is impossible to redistribute persons deprived of liberty among the rooms without reducing the available space (which is too scarce as it is), and undertake refurbishment of most of the building at the same time. Therefore, all refurbishment and adaptations are conducted gradually, primarily for the security reasons, so that apart from already refurbished and reconstructed blocks 1-1 and 2-1, blocks 4-1 and 4-2 are about to be refurbished. Pertinent financial resources have been provided from the 2008 National Investment Plan of the Republic of Serbia. After that, refurbishment of the ground floor area, following the findings of the Committee, i.e. blocks 2-0 and 3-0, for which pertinent financial resources have been provided from the 2009 National Investment Plan of the Republic of Serbia will be undertaken.

42bis. The refurbishment will, of course, be conducted following the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (toilets with partitions, common shower rooms).

42ter. Comments relating to the bedding of persons deprived of liberty are accurate, but we have already signed a contract for supply of bedding, and the delivery is expected any day now.

- **The Serbian authorities to take, without delay, appropriate measures to relocate the kitchen of Belgrade District Prison (paragraph 50).**

43. Comments of the Committee relating to the kitchen of Belgrade District Prison, i.e. its inadequate location, are quite true. Accordingly, so far extremely harsh measures were in place in respect to sanitary and hygienic requirements in this part of the building both by the prison staff and external experts that have been contracted. The result of the effort was that no objections to the quality of food were received, but the risk is permanent and very high, so that a design of a new kitchen was prepared and approved by all competent public bodies. Accordingly, the kitchen will be relocated from the cellar to a safe location in the prison yard. After that, the Administration for the Enforcement of Penal Sanctions has approved the invitation to bid for these works, and this procurement is in its final stage. Realistically, the Belgrade District Prison will get a new modern, hygienically safe kitchen by the end of this year.

- **Steps to be taken to refurbish, as a matter priority, the cells in Pavilion II of Sremska Mitrovica Correctional Institution (paragraph 53).**

44. The Administration for the Enforcement of Penal Sanctions has earmarked resources to refurbish the Pavilion II of Sremska Mitrovica Correctional Institution in the 2009 Budget of the Republic of Serbia. Therefore, refurbishment of the Pavilion will be carried out next year. Pavilion I of the Sremska Mitrovica Correctional Institution has been completely refurbished and movement of the inmates is planned for July 2008. The rooms for inmates fully comply with the international standards; they are spacious, with large windows, own toilets, sinks and showers. The rooms will, according to the size, accommodate 4 to 8 inmates.

44*bis*. Because of refurbishment of Pavilion I, inmates from Pavilion II and a part of inmates from Pavilion I are placed into the new facility that was initially planned for admission department, until the works have been completed.

44*ter*. The admission department is temporarily placed in the drug-free pavilion which will become operational after Pavilion I comes into use and sufficient number of staff are employed in the custodial service. The Investigating Department moved into the new building where all cells are furnished with toilets and floor heating.

- **No more than two inmates to be accommodated in each cell in Pavilion II of Sremska Mitrovica Correctional Institution (paragraph 53).**

45. It is currently impossible to comply with this recommendation since reconstructions of Pavilion I is in progress. Since completion of the works is expected by the end of September 2008, management of the Sremska Mitrovica Institution in co-operation with the Administration for the Enforcement of Penal Sanctions of the Ministry of Justice will be able to comply with this recommendation.

- **The in-cell toilets in Pavilion III of Sremska Mitrovica Correctional Institution to be equipped with a partition (paragraph 53).**

46. The Administration for the Enforcement of Penal Sanctions of the Ministry of Justice has also identified this shortcoming. Accordingly, we inform the European Committee that the construction design is in progress to enable placement of partitions to provide privacy.

- **Steps to be taken at Požarevac-Zabela Correctional Institution in order to:**
  - \* **reduce the cell occupancy levels, the objective being to comply with the standard of 4m<sup>2</sup> of living space per person in multi-occupancy cells,**
  - \* **refurbish Pavilion VII and the remand section, so as to remedy the deficiencies described in paragraphs 55 and 56 of the report (including as regards toilets and showers),**
  - \* **improve prisoners' access to a shower, in the light of Rule 19.4 of the revised European Prison Rules,**
  - \* **provide all prisoners with a range of personal hygiene items and of products to clean their cells (paragraph 57).**

47. Relating to the recommendation to refurbish Pavilion VII, we inform you that this is the top security section of the Požarevac-Zabela Correctional Institution which is the only strictly closed institution in the Republic of Serbia. In order to undertake its refurbishment, conditions have to be provided for placement of these persons elsewhere. Construction of another strictly closed facility in Padinska Skela, (planned completion of work: August 2009) will provide conditions for refurbishment of Pavilion VII in the second half of 2009, and pertinent financial resources will be earmarked for that purpose.

47bis. Compliance with these recommendations relating to access to showers and supply of items for personal hygiene will be controlled by the Supervising Department at the Administration for the Enforcement of Penal Sanctions since these rights have been granted by the Law on Enforcement of Penal Sanctions and House Rules in correctional institutions and district prisons.

- **The oppressive practice of obliging inmates in Pavilion VII of Požarevac-Zabela Correctional Institution to listen to loud music the whole day to be stopped immediately (paragraph 58).**

48. We inform you that the management of the Požarevac-Zabela Correctional Institution denied the statements of inmates relating to playing loud music through the loudspeakers, and that authorized persons in the supervisory department did not register such treatment of the inmates.

#### Comments

- **The Serbian authorities are invited to provide the juveniles accommodated at Belgrade District Prison with food according to their dietary needs (paragraph 50).**

49. Relating to nutrition of minors in custody, there is no difference in types of food for minors vs. adults in detention, but the recommendation will be taken into account and in consultation with persons with appropriate expertise, we shall try to find a solution that will meet the specific dietary needs of underage inmates.

Request for Information

- **The progress in the adoption and implementation of the refurbishment programme for Belgrade District Prison (paragraph 49).**

50. We fully agree with the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment relating to the need for further refurbishment, particularly the ground floor part of the remand section, as specified in paragraphs 42 & 43 of this Response.

- **Comments of the Serbian authorities on whether the available resources would not be used in a more efficient manner by building a completely new establishment in Belgrade (paragraph 49).**

51. Referring to the Committee recommendations relating to the dilemma between investment into the current or building of a new facility, the analysis has been carried out and raising a new building is the final solution, but objectively it cannot be accomplished before 2021 because of associated requirement of urban planning and required financial resources. Therefore, we need to continue the refurbishment works to improve the conditions in the current facility.

- **The timetable for the completion of the refurbishment of Pavilion I of Sremska Mitrovica Correctional Institution, as well as for bringing the new admission/remand and “drug-free” units into service (paragraph 53).**

52. Pavilion I of the Sremska Mitrovica Correctional Institution has been completely refurbished, and movement of inmates is planned for early July 2008. The rooms for accommodation fully correspond to the international standards: they have large windows, own toilets, sinks and showers. The rooms will accommodate 4-6 inmates, depending on the room size. Because of refurbishment of Pavilion I, inmates from Pavilion II and a part of inmates from Pavilion I are placed into the new facility that was initially planned for admission department, until the works have been completed. The admission department is temporarily placed in the drug-free pavilion which will become operational after Pavilion I comes into use and sufficient number of staff is employed in the custodial service. The Investigating Department moved into the new building where each cell is furnished with a toilet and floor heating.

- **The date of entry into service of Pavilion VI of Požarevac-Zabela Correctional Institution, as well as its official capacity and detention regime (paragraph 54).**

53. Pavilion VI of Požarevac-Zabela Correctional Institution for persons convicted of crimes involving the organized crime aspect has the capacity to accommodate 64 sentenced prisoners. The Administration for the Enforcement of Penal Sanctions in co-operation with OSCE Mission in Belgrade prepared a draft Law on Enforcement of Penal Sanctions for Crimes Involving Organized Crime, the adoption of which is planned for December 2008. The pavilion will be open only after adoption of this law. Enactment of the special law is necessary since any prediction of the so-called special regime of execution of penitentiary sanction additionally limits the rights of people deprived of liberty. The special piece of legislation is needed to establish the balance between the need for enhanced protection of the society from organized crime and, on the other hand, compliance with all international standards in the area of human rights of persons deprived of liberty, as well as constitutional guarantees of these rights. Therefore, the position was taken to enable periodic re-evaluation of the need to extend the penitentiary sanction in the special department, not to allow subsequent referral to the special department from the so-called general regime, and that judicial competence should be provided in relation to restrictions of rights of convicted persons.

- **Confirmation that the basement cells in Pavilion VII of Požarevac-Zabela Correctional Institution are no longer in service (paragraph 55).**

54. The basement cells in Pavilion VII of Požarevac-Zabela Correctional Institution have not been used for placement of inmates for over 6 months now. Only temporarily some persons transferred from the Niš Correctional Institution were placed there immediately prior to the Committee visit (decisions on transfer correspond to dates of their placement) since the Pavilion VII was fully occupied. We hereby inform the European Committee that the basement cells are no longer used for accommodation.

## **Activities**

### Recommendations

- **The Serbian authorities to ensure that all remand prisoners at Belgrade District Prison and Požarevac-Zabela and Sremska Mitrovica Correctional Institutions are offered the possibility to take outdoor exercise every day for at least one hour. Further, the exercise yard at Belgrade District Prison should be equipped with a means of rest and a shelter against inclement weather (paragraph 59).**

55. Referring to activities of remand prisoners, the regulations stipulate that they are offered the possibility to take outdoor exercise, i.e. stay in fresh air, which is complied with, and the findings of the Committee on the duration of such exercise are mostly correct, although slightly lower. Nevertheless, with certain re-shuffle of the organization of the security service activities, we shall do our best to prolong the time, although in respect to various exercise activities of remand prisoners, the Committee should also understand that the prison management is also limited by statutory regulations that prioritize institution safety and unhindered criminal proceedings. The Law on Enforcement of Penal Sanctions stipulates that remand prisoners serve their time under the same conditions as the sentenced prisoners, but the Code on Criminal Procedures and House Rules for Remand Prisoners specify limitations for the regime these persons are under while in prison. Also, the Code on Criminal Procedure specifies that persons convicted under the ruling in the first instance, whose remand was prolonged until the ruling becomes officially valid, may ask to be referred to serve their sentence before the ruling becomes valid, and in these cases, they have the same rights and duties as the sentenced prisoners. Remand prisoners do not sufficiently use this option, which may make it possible for them to be under the regular regime of serving the sentence.

*55bis.* The rules explicitly specify that during their stay outdoors the remand prisoners may walk or sit, and in their spare time they may play chess or other games, gambling excluded.

*55ter.* Upon advice of the Committee, measures will be taken to equip the walking paths at the District Prison in Belgrade with means of rest and shelter against inclement weather.



- **The Serbian authorities to review the regime of remand prisoners, in the light of the remarks set out in paragraph 60 of the report (paragraph 60).**

56. Important measures have been undertaken to increase the number of volumes and titles in the prison library, and significant success has been achieved. Remand prisoners are informed from the security staff that the library and book are available. Nevertheless, we shall take the obligation that the information is spread continuously so that each remand prisoner is aware of the possibility to use the library and have the access to it.

56bis. The Administration for the Enforcement of Penal Sanctions submitted a proposal for amendments of provisions on treatment of remand prisoners, their status and rights to the Task Force set up by the Minister of Justice of the Republic of Serbia that will pursue formulations of amendments to the Code of Criminal Procedure.

- **The Serbian authorities to take urgent measures to ensure that juvenile prisoners are offered educational and recreational activities, which take into account the specific needs of their age group. Physical education should form a major part of that programme. For this purpose, juvenile prisoners should have access to the indoor gym facility on the premises of Belgrade District Prison (paragraph 61).**

57. The Committee Report refers to juvenile prisoners, and at the end of this paragraph (61) it is repeated that juvenile prisoners should have access to the indoor gym facility on the premises of Belgrade District Prison. We assume that this is a translation error, since only remand (not the sentenced ones) juvenile prisoners are placed in this facility. Thus, the problem was associated with underage remand prisoners, and the same issues recognized in respect to the adult remand prisoners apply, due to the already substantiated reasons.

- **The Serbian authorities to take steps to increase the provision of purposeful activities for sentenced prisoners. In this context, the authorities should seek to introduce measures aimed at ensuring that all prisoners are provided with an opportunity to work. Efforts should also be made to develop programmes of education and vocational training in all penitentiary establishments (paragraph 62).**

58. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has quite correctly noted that education, vocational training and other activities planned for convicted persons in prisons, particularly in the departments with enhanced supervision have been neglected in recent years. The situation resulted from caving in of the old system of training and work of convicted persons. The system was based on establishment of large manufacturing plants that not only employed the convicts but generated profits, as well. With enactment of the 2005 Strategy for Reform of the System of Execution of Penitentiary Sanctions the Administration for the Enforcement of Penal Sanctions took the stand that work of convicts is only one party of the treatment program. System reorganization is in progress with setting up of small workshops where the convicts will primarily attend vocational training that they may pursue once they have served their time.

58*bis*. The Administration for the Enforcement of Penal Sanctions makes an effort, relying on own resources and applying for donations, to provide necessary conditions to improve the possibility of involvement of convicts in the closed departments of the institution into special programs (vocational training, work, education, art classes, sports activities). These programs will improve motivation of the convicts to cooperate in implementation of individual treatment programs and reduce the current tension in these departments.

58*ter*. In 2007 funds provided by international grants were used to provide manufacturing tools/equipment for institutions accommodating persons with special needs. These are the Valjevo Correctional Institution for Minors, Correctional Institution for Women and Correctional Facility in Kruševac. The total value of the tools/equipment was EUR 950 thousand.

- **The Serbian authorities to take steps to develop the regime applied to prisoners identified as posing a security risk and other long-term prisoners at Požarevac-Zabela and Sremska Mitrovica Correctional Institutions, taking due account of the remarks set out in paragraph 64 of the report. If necessary, the relevant legislation should be amended (paragraph 64).**

59. The prisoners placed in Pavilion III of the Sremska Mitrovica Correctional Institution enjoy the regime of outdoor activities every day for one hour. This is a closed area furnished with a gym, basketball court and these are activities enjoyed by all prisoners in a block (15-20 prisoners at a time).

59*bis*. In the light of the changed criminological structure of the population of prisoners and increasing number of persons convicted for long term sentences, we are faced with a problem of treatment program for these persons. We therefore plan to enact a special rulebook to regulate the mode of life and occupation of these persons.

- **The Serbian authorities to review the classification system for sentenced prisoners and its implementation as a matter of urgency, with a view to making it effective, objective, clear and linked with a comprehensive treatment programme (paragraph 66).**

60. Relating to the Committee's comments on the classification system for sentenced prisoners, we confirm that the Administration for the Enforcement of Penal Sanctions in co-operation with OSCE have prepared a draft of the Rulebook on Treatment Program, Classification and Subsequent Classification of Sentenced Prisoners. The Rulebook introduces clearly defined criteria and procedures for adoption of treatment programs, classification and subsequent classification of sentenced prisoners relying on the Questionnaire for Assessment of the Level of Risk, Capacities and Needs. Measurable criteria will be used to classify a sentenced prisoner into the closed, semi-closed or open departments based on the assessed level of risk. At the same time, evaluation of the capacities and needs will be used to set individual goals and develop a quality treatment program. The questionnaire and treatment program will be presented as templates and integrated into the Rulebook. Once feasibility of Questionnaire application is tested in selected institutions over a specified time, and after its success has been verified, adoption of the Rulebook is planned. In December 2007 the Rulebook was presented to the staff of correctional institutions.

- **Steps to be taken to allow remand prisoners to meet a religious representative in private (paragraph 67).**

61. We believe that the comment in paragraph 67 of the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is due to misunderstanding or inadequate translation, since religious representatives visit remand prisoners without any problems whatsoever, and we have never had any complaint in this respect. Moreover, court approval is not required for each visit, since the religious representative has been appointed by the Serbian Orthodox Church to avoid unnecessary delay of these visits.

#### Request for information

- **Any projects currently underway in the Serbian penitentiary system similar to the re-opening of the school at Sremska Mitrovica Correctional Institution (paragraph 62).**

62. WE REFER YOU TO PARAGRAPH 58 OF THIS RESPONSE.

#### **Health-care services**

#### Recommendations

- **The Serbian authorities to take steps to reinforce the health-care resources of the three penitentiary establishments visited, and in particular to:**
  - \* **substantially increase the number of qualified nurses (“medical technicians”),**
  - \* **appoint one more general practitioner at Požarevac-Zabela Correctional Institution,**
  - \* **improve the dental care arrangements,**
  - \* **ensure that someone qualified to provide first aid, preferably with a recognized nursing qualification, is always present on the prison’s premises, including at night and weekends (paragraph 68).**

63. Relating to the comments on the number of health care staff, it is quite true, but the District Prison in Belgrade is helpless in this respect since the number of staff is specified in the Rulebook on Internal Organization and Job Descriptions at the Administration for the Enforcement of Penal Sanctions. As to the equipment of the dental surgery, we underline that completely new, modern dental chair has been procured enabling adequate treatment.

63bis. Referring to the recommendation for first aid training, we can appropriately comply by referring our health care staff to the pertinent training if there is one at the Metropolitan Emergency Service in Belgrade.

63ter. At the Sremska Mitrovica Correctional Institution great effort has been made to strengthen the health care services by new staff. One more physician and four nurses (medical technicians) will be employed. In order to provide higher quality health care service 12 specialists from the Sremska Mitrovica Medical Center, a laboratory technician (2-3 times a week) and an X-ray technician (as needed) have been contracted so that a large amount of work is accomplished in the institution in-patient department. Referring to the objection that the dental care is provided by only one full-time dental nurse, it is not correct, since a dental surgeon is also employed full time (3 mornings and 2 afternoons a week). The dental surgery operates following the same rules applied in the regular health care system. Regular control of sterilization is conducted, and substantiating documentation is available. A prosthetic dentist is outsourced as needed, and so is a specialist in oral surgery.

63<sup>quater</sup>. The Požarevac-Zabela Correctional Institution made great effort to improve health care services for sentenced prisoners, primarily by refurbishment of the prison hospital, procurement of equipment and hiring physicians on the basis of service contract. Hiring to fill in the vacancies pursuant to the current organizational structure is also in progress.

- **The use of prisoners as orderlies at Sremska Mitrovica and Požarevac-Zabela Correctional Institutions to be phased out, and steps to be taken to ensure that the distribution of medicines is performed by qualified health-care staff (paragraph 69).**

64. Referring to the comment on the use of prisoners as orderlies for health care of sentenced and remand prisoners, we inform you that the sentenced prisoners are engaged only in hygiene maintenance in doctors' offices and in-patient department. Custodial staff is involved in distribution of medicines only exceptionally, when available nursing staff are unable to do that due to staff shortage and organizational limitations.

- **The Serbian authorities to reinforce the provision of psychiatric care and psychological support to prisoners, with particular attention being paid to the needs of prisoners serving long sentences (paragraph 70).**

65. Following the recommendations related to psychiatric care and psychological support we inform you that in the District Prison in Belgrade these posts are not included in the organizational structure of the health care services, but we have hired a medical doctor specialized in psychiatry on a service contract on a permanent basis. As to psychological support, this medical aspect is related rather to mental health and we have an ongoing collaboration with the Special Prison Hospital in Belgrade.

65<sup>bis</sup>. The Sremska Mitrovica Correctional Institution included a post of a psychiatrist in the organizational structure, but it has remained vacant, since nobody has applied for the job. Therefore, one of the prison doctors was referred for psychiatric residency, so that the problem will be resolved soon. For the time being, we use the services of a neuropsychiatry specialist from the Sremska Mitrovica Medical Center (2-3 times a week, occasionally more).

- **Steps to be taken to ensure strict adherence to the rule that all prisoners must be seen by a health-care staff member within 24 hours of their arrival. The medical examination on admission should be comprehensive, including appropriate screening for transmissible diseases (see also paragraph 75 of the report). The same approach should be followed whenever a prisoner is medically examined following a violent episode in prison (paragraph 72).**

66. Relating to the statements in paragraph 72 of the European Commission Report suggesting that as many as 3 days may pass before a medical examination of a sentenced prisoner admitted to serve the sentence at the District Court in Belgrade, the time may be prolonged only if the person is admitted on a Saturday afternoon, when the examination is carried out on Monday morning, since this is the only time when there are not doctors on duty. This is the only situation in which the 24 hr deadline may be exceeded (paragraph 11 of the House Rules in Correctional Institutions and District Prisons). In order not to postpone the medical examination in these cases, we shall apply the measures to provide an on-duty doctor for these situations, as well, i.e. Sunday examination of sentenced persons that are admitted on Saturday afternoon to serve their sentence.

66bis. At the Sremska Mitrovica Correctional Institution the first medical examination is conducted upon admission to the Institution, or on the following day if the admission took place when the doctor was not on duty. The identified omission took place in the remand department since the admission was not promptly reported. The incident has not been repeated.

- **The Serbian authorities to ensure that all medical examinations of prisoners (whether on arrival or at a later stage) are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers (paragraph 73).**

67. Paragraph 73 generally states that in all three institutions a member of custodial staff is present at the medical examination. However, this is not the case at the District Prison in Belgrade. Custodial staff is present at the medical examination only in special situations when the attending physician requires so. At the Požarevac and Sremska Mitrovica correctional institutions custodial/security staff may be present at the examination upon request of the attending physician, but there are partitions in the doctor's office so that privacy is not completely violated even in cases when aggressive sentenced prisoners are examined.

- **The quality of medical documentation in Serbian prisons to be improved. In particular, personal medical files should contain diagnostic information as well as an ongoing record of the prisoner's state of health and of any special examinations he/she has undergone (paragraph 74).**

68. The shortcomings of the quality of medical documentation will soon be rectified when the patient charts are standardized in all prisons.

- **The Serbian authorities to develop a strategy for combating transmissible diseases in prison (in particular, hepatitis, HIV, dermatological infections) involving the provision of information to both prisoners and prison staff concerning methods of transmission, as well as the supply of appropriate means of protection analogous to those used in the community at large (paragraph 75).**

69. The strategy for combating transmissible diseases in prisons has been developed. In 2007 the OSCE Mission in Belgrade organized training for prison staff all over Serbia. Popular brochures were published on prevention of transmission of communicable diseases and distributed to all prisons in Serbia. Further, pertinent training of staff employed in Serbian prisons was also conducted in collaboration with UN.

- **The Serbian authorities to develop a comprehensive strategy for the provision of assistance to prisoners with drug-related problems, in the light of the remarks made in paragraph 76 of the report (paragraph 76).**

70. Relating to the recommendation to develop a comprehensive strategy for the provision of assistance to prisoners with drug-related problems, we inform you that we have set up drug-free departments at the Niš and Sremska Mitrovica Correctional Institutions, Special Prison Hospital in Belgrade and District Prison in Novi Sad. All other institutions apply treatment in collaboration with the municipal health care centers.

- **The Serbian authorities to remedy the shortcomings observed in the recording and investigation of deaths of inmates at the penitentiary establishments, and prison doctors to be systematically provided with the conclusions of autopsy reports concerning prisoners who have died in their establishments (paragraph 77).**

71. Relating to autopsy reports of deaths of inmates at the penitentiary establishments, the reports and their conclusions are not provided to the correctional institutions, but to the investigating judge only.

- **The Serbian authorities to take steps to ensure the active involvement of prison health-care services in all health-related aspects in prisons, in the light of the remarks set out in paragraph 78 of the report (paragraph 78).**

72. Relating to the active involvement of prison health-care staff in food quality control, hygiene, heating, airing and light in the cells, as well as physical exercise, these tasks are a regular part of their job description and are regularly performed by the health care services.

#### Comments

- **The Serbian authorities are invited to introduce a uniform system for keeping medical registers in the penitentiary system (paragraph 74).**

73. The shortcomings of the quality of medical documentation will soon be rectified when the patient charts are standardized in all prisons.

- **The Ministry of Health should get more actively involved in the area of prison health-care services (including as regards the recruitment of health-care staff, their in-service training, evaluation of malpractice, certification and inspection), with a view to ensuring respect for the principle of equivalence of care. This means that prison health-care services should be able to provide medical treatment and nursing care, as well as physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community (paragraph 79).**

74. The Health Care Commission was established in collaboration of the Ministry of Justice and Ministry of Health. The aim is to enact all necessary regulations in the field of health care of persons deprived of liberty and organization and treatment of health care staff that work at these institutions.

#### Request for information

- **The Comments of the Serbian authorities on the apparent delays as regards transferring inmates for treatment to hospital facilities and access to medical specialists outside the penitentiary system (paragraph 71).**

75. In relation to transfer of persons for treatment to hospital facilities and access to medical specialists outside the penitentiary system, it is true that not all remand and sentenced prisoners are referred immediately upon confirmation of a disease, but it depends on the type, nature and severity of disease, as well as on the possibilities for hospitalization in outside facilities.

Nevertheless, persons in life-threatening conditions are always referred immediately, without delay. Pertinent decisions are made by the health care service team of experts. Thus, there is a difference in referral to treatment outside the penitentiary system for those in life-threatening conditions who require emergency specialist treatment or hospitalization and those who need such care, but are not in immediate danger. The decisions are made, like in everyday life outside prisons, taking into account the level of urgency and organization of admission to health care institution that apply to all patients.

## **Special Prison Hospital in Belgrade**

### Recommendations

- **Custodial staff at the Special Prison Hospital in Belgrade to be reminded that all forms of ill-treatment (including verbal abuse) are not acceptable and will be the subject of severe sanctions (paragraph 81).**

76. Custodial staff at the Special Prison Hospital in Belgrade are a part of the team headed by a medical doctor specialized in psychiatry. The custodial staff are allowed in the rooms where patients are accommodated without permission of the doctor only in emergency situations (assault on any of the staff or conflicts among patients).

- **Custodial staff to be instructed not to enter the patients' living areas unless requested by the health-care staff and not to carry truncheons in a visible manner while present inside the above-mentioned areas (paragraph 81).**

77. This request is complied with as much as it is practical, so that non-medical staff enters patients' room only upon request or in case of necessary and ordered interventions.

- **Detailed regulations concerning the duties of custodial staff employed at the Hospital to be adopted as a matter of urgency (paragraph 82).**

78. In collaboration with the OSCE Mission in the Republic of Serbia, a working group was set up to develop by-laws, including the House Rules for the Special Prison Hospital which will be applied to all in-patient units in the system of execution of penitentiary sanctions. The working group has only started working and the output, i.e. draft regulations and by-laws are expected soon.

- **Steps to be taken to review the procedures for the selection of security staff and their initial and ongoing training (paragraph 82).**

79. The custodial staff that start working at the Special Prison Hospital attend traineeship with supervised practical work. In the course of such traineeship that may last from 6 months to a year, the custodial staff are not allowed to operate on their own, but always under supervision of experienced colleagues. During that time, intensive training in the area of security is conducted, as well as attitude to patients, which is taught by doctors and psychologists. This is stipulated in the Rulebook on Traineeship Curriculum. All trainees, in addition to direct training at the prison hospital attend the practical and theoretical part of the training at the Staff Training Center at the Administration for the Enforcement of Penal Sanctions in Nis. Upon completion of the training, they take exam to qualify for posts in security, i.e. custodial staff.

- **The Serbian authorities to step up their efforts to combat the phenomenon of inter-patient violence at the Hospital; this will require *inter alia* a substantial increase in nursing staff levels and presence (see paragraph 92 of the report) (paragraph 83).**

80. The Special Prison Hospital is aware of inter-patient violence. With increasing number of staff, pertinent training and better organization, the problem has receded. Video surveillance that has only just been mounted will also reduce the phenomenon of inter-patient violence.

- **A clearly defined policy on the use of means of restraint at the Hospital to be drawn up. This policy should make clear that means of mechanical restraint are to be removed at the earliest opportunity. Doctors should always fix precise time-limits for the restraint measure; any continuation should require another authorization by a doctor. Nursing staff (as well as custodial staff, for as long as recourse has to be had to their assistance) should receive specific training in both non-physical and manual control techniques vis-à-vis agitated or violent patients (paragraph 84).**

81. Special registers for cases of use of means of restraint are kept at all departments, but wards A and B accommodate chronic psychiatric patients, hospitalized for several years so that the use of restraints (physical immobilization of patients) is more common. The use of restraints over night for prolonged periods (over several months) has been recorded in two patients only. These are psychiatric patients that have been hospitalized for several years, and due to the nature of the underlying diseases, years of irregular treatment before admission to the Special Hospital and duration of stay in our institution, permanent mental damage ensued associated with frequent loss of behavioral control that cannot be rectified with medication.

81bis. Patients are placed under restraints only upon doctor's order. Members of custodial staff trained in the use of minimum force for control of agitated patients as a part of their training in martial arts at the Training Center in Niš are in charge of restraining. Medical staff cannot be involved in physical management of aggressive patients, since the nursing staff are mainly women. That is why the custodial staff are involved. All custodial staff have attended training to overpower aggressive patients without the excessive use of force.

81ter. Truncheons and handcuffs are not used for restraint of agitated psychiatric patients at the Special Prison Hospital.

81quater. Relating to the recommendation to adopt a rulebook on the use of restraints at the Special Prison Hospital, we inform you that currently the Rulebook on Measures for Control of Order and Security at the Institutions for Enforcement of Penal Sanctions is in use. In the part covering the use of restraint by leather belts, it is explicitly stipulated that order of a psychiatrist or neuropsychiatrist is required to use this mode of control, i.e. that this measure may be used only exceptionally directly, but that examination by a psychiatrist or neuropsychiatrist is mandatory within two hours of restraining. This Rulebook also prescribes medical supervision of the use of this measure and medical opinion on further use, i.e. termination of use.



- **The refurbishment programme of the Hospital to be pursued as a high priority. Further, ways should be sought to significantly reduce the level of overcrowding at the establishment (paragraph 85).**

82. Continuation of the refurbishment programme of the Hospital is pursued as a high priority of the Administration for the Enforcement of Penal Sanctions of the Ministry of Justice, so that it will evolve pursuant to the established plan and provided financial resources.

- **The Serbian authorities to take urgent steps to address the problem of hygiene in patients' accommodation areas at the Hospital. Particular attention should be given to the needs of incontinent patients (including the adequate supply of special mattresses and diapers). Further, arrangements should be found to ensure that patients' clothes are kept clean (paragraph 86).**

83. Improvement of hygiene of bed ridden/incontinent patients is achieved through greater involvement of the nursing staff. Sufficient amount of necessary supplies is provided (diapers for adults).

- **Steps to be taken without delay to ensure that all patients whose medical condition allows it are offered the possibility to take outdoor exercise every day, in accordance with the law. Further, the outdoor exercise yard should be equipped with a means of rest and a shelter against inclement weather (paragraph 87).**

84. The construction features of the facility in which the Special Prison Hospital is situated limit the possibility of outdoor exercise. However, in spite of that, patients in wards A and B, psychiatric wards, enjoy the possibility of spending some time outdoors every day. Improvement of the area has been undertaken and the progress can already be seen.

- **Efforts to be made to develop the range of rehabilitative psycho-social activities for psychiatric patients at the Hospital; 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 (paragraph 88).**

85. In the treatment process, the occupational and recreational parts are important aspects, particularly in terms of rehabilitation and re-socialization of patients. At the department of occupational therapy within the psychiatric ward we have eight highly trained staff. More of these activities are needed, particularly for psychiatric patients, but the greatest problem in achieving this goal is insufficient number of medical staff, particularly senior occupational therapists so that with recruitment of more staff we expect to intensify the treatment activities.

- **An individual treatment plan to be drawn up for each psychiatric patient (taking into account the special needs of acute and long-term patients), including the goals of the treatment, the therapeutic means used and the staff members responsible. Patients should be involved in the drafting of their individual treatment plans and the evaluation of their progress (paragraph 88).**

86. For all patients, alcoholics and drug addicts, individual treatment plans are drawn up including psychotherapeutic activities, involvement in occupational therapy, contacts with family and community they came from. Each patient has an individual medical treatment plan, as well.

- **Steps to be taken to improve living conditions in the room for TB patients at the Hospital (paragraph 91).**

87. All new patients in the hospital undergo TB diagnostic test. Recording and reporting of injuries apply to all new patients in the hospital. Refurbishment of the part of the hospital accommodating TB patients is currently under way. It is funded jointly by the Ministry of Health and Global Fund.

- **Further efforts to be made to increase the staffing levels and the time of presence of health-care staff at the Hospital, especially as regards nurses and staff qualified to provide psycho-social therapeutic activities (paragraph 92).**
- &
- **Steps to be taken to provide nurses working with psychiatric patients with training reflecting the specialized nature of their work (paragraph 92).**

88. In the preceding years, particularly 2006 and 2007 medical staff (doctors and nurses) regularly attended educational courses and congresses. Besides, in October 2007 all health care staff applied for membership in their respective licensing associations (chambers) that require continuous education within the Ministry of Health and Serbian Medical Association. We believe that this mode of training of medical and nursing staff is better, since we aim at the same level of treatment in prisons as in the population at large.

- **The disciplinary/isolation cells at the Hospital to be taken out of service until such time as the deficiencies mentioned in paragraph 93 of the report are remedied (paragraph 93)**

89. Section 152 of the Law on Enforcement of Penal Sanctions regulates stay in the isolation cells, while Section 28 of the Rulebook on Disciplinary Offences, Measures and Actions against Sentenced Prisoners stipulates stay out of the isolation cell at least one hour a day. It is absolutely untrue that sentenced prisoners placed in this unit spend only 5 minutes a day out of the cell. These persons also have access to showers like all other patients (twice a week as the minimum).

89bis. We also inform you that the isolation units that you described in paragraph 93 are no longer used for placement of persons to whom a disciplinary measure has been pronounced.

- **Steps to be taken to ensure that inmates place in disciplinary/isolation cells are offered at least one hour of outdoor exercise each day. Further, persons placed in such cells should be granted access to a shower at least once, preferably twice, a week (paragraph 93).**

90. As you already know, in most of the institutions countrywide this requirement has been fully complied with, although in some due to a large number of inmates (overcrowding) duration of outdoor exercise is slightly reduced, but the time and right to outdoor exercise are not denied to any.

- **The existing legislation to be amended so as to ensure that patients and their lawyers receive a written copy of the court decision on compulsory hospitalization (paragraph 94).**

91. Court decisions ruling a security measure of compulsory psychiatric treatment and institutionalization are served to the person concerned and his/her defense lawyer in the criminal proceedings. This ruling may be contested and all persons entitled to appeal may do so, except for the victim. Thus, in respect to serving the decision and appeal, the procedure stipulated in the Code on Criminal Procedure is applied. The hospital staff that said that the court decisions were not served to the persons concerned (to whom the measure is pronounced) and his/her lawyer (note: defense lawyer is a mandatory party in this procedure) were not familiar with the criminal proceedings, so that they misinformed the delegation members.

- **Measures to be taken to subject all compulsory placements of criminally irresponsible patients to an automatic court review at reasonable intervals (e.g. every six months). The patient and/or his lawyer should be allowed to be present during the review hearing. Further, the patient and his lawyer should have access to the deliberations and recommendation of the Hospital's internal commission, and be allowed to request an examination by an outside psychiatric expert. In addition, the patient himself should be able to request at reasonable intervals that the necessity for placement be considered by a judicial authority (paragraph 95).**

92. Misunderstanding also ensued in respect to validity of the decision pronouncing the measure of compulsory placement in a medical institution where, allegedly, there is no mechanism for review in reasonable intervals. This is untrue, since the Code on Criminal Procedure explicitly stipulates mandatory court review *ex officio* in nine month intervals on whether the need for commitment in a psychiatric institution is still present or not. If the appeal to suspend the measure is rejected, it may be submitted again six months after the decision has been enacted. The public prosecutor and patient's lawyer are notified on the review hearing, and the patient (perpetrator) will also be heard if this is needed and feasible.

- **The Serbian authorities to seek to resolve the problem of continuing hospitalization of forensic psychiatric patients at the Hospital on non-medical grounds (paragraph 96).**

93. The staff made a general comment that in the process of suspending or replacement of the measure of compulsory commitment and psychiatric treatment the court does not always follow the hospital recommendation. Instead, the court is obliged, in each individual case, to investigate all aspects and need for continued treatment, i.e. care without commitment, consultations with other bodies competent for further treatment or welfare care of these persons. Of course, in these situations the court encounters problems associated with further placement, depending on the status of such person (in some cases the court ruled to deprive them of business capacity) so that based on the body of evidence they try to find the optimum solution when the decision is made. Placement of persons for whom a security measure is suspended or replaced must not supersede medical grounds and evaluation, but must also be resolved in collaboration with other public bodies. The Ministry of Justice insists on improvement of collaboration of all stakeholders in the process of treatment of persons in health care institutions and their re-socialization in the community, as well.

- **A brochure setting out the establishment's routine and patients' rights to be drawn up and systematically provided to patients and their families on admission to the Hospital (paragraph 97).**

94. The Administration for the Enforcement of Penal Sanctions and OSCE Mission in Belgrade distributed special publications of legislative texts in the area of penal legislation, rulebooks and international conventions to all institutions, including the Special Prison Hospital, together with recommendations for libraries open to patients and sentenced prisoners. It is now planned to prepare a special manual for persons deprived of liberty where their rights and relevant procedures will be presented in a manner understandable to them.

#### Comments

- **Special register for recording instances of use of restraints should be introduced in all the wards (paragraph 84).**

95. Special register for recording instances of use of restraints are in place in all the wards, but wards A and B accommodate chronic psychiatric patients hospitalized for years, so that the use of restraint (physical immobilization of patients) is more common. Only two patients were subjected to restraint over night for a period of several months.

- **The application of restraints every night for months on end has no therapeutic justification (paragraph 84).**

96. These are psychiatric patients in treatment in our hospital where due to the nature of the underlying disease, years of irregular treatment and duration of stay in our institution, permanent mental damage ensued associated with frequent loss of behavioral control that cannot be rectified with medication.

- **Mechanical restraint should normally be applied only by duly trained health-care staff (paragraph 84).**

97. Patients are placed under restraint only upon doctor's order. Members of custodial staff trained in the use of minimum force for control of agitated patients as a part of their training in martial arts at the Training Center in Niš are in charge of restraining.

97bis. Medical staff cannot be involved in physical management of aggressive patients, since the nursing staff are mainly women. That is why the custodial staff are involved. All custodial staff have attended training to overpower aggressive patients without the excessive use of force.

- **The use of truncheons and handcuffs is not an appropriate way of dealing with agitated psychiatric patients (paragraph 84).**

98. Truncheons and handcuffs are not used for restraint of agitated psychiatric patients at the Special Prison Hospital.

- **Efforts are still required to develop the treatment programme for the majority of patients with drug or alcohol addiction problems (paragraph 89).**

99. For all patients, alcoholics and drug addicts, individual treatment plans are drawn up including psychotherapeutic activities, involvement in occupational therapy, contacts with family and community they came from. Each patient has an individual medical treatment plan, as well.

- **The remarks and recommendations made in paragraphs 20 and 47 of the report on the subject of the recording and reporting of injuries observed on newly-arrived prisoners apply equally with respect to the Special Prison Hospital in Belgrade (paragraph 90).**

100. This requirement is much easier to comply with at the Special Prison Hospital in Belgrade because of permanently present medical staff on duty.

#### Request for information

- **Confirmation that the initial examination procedure at the Hospital includes screening for TB (paragraph 90).**

101. All new patients in the hospital undergo TB diagnostic test. Recording and reporting of injuries apply to all new patients in the hospital. Refurbishment of the part of the hospital accommodating TB patients is currently under way. It is funded jointly by the Ministry of Health and Global Fund.

- **More detailed information about the circumstances of the death of patient Z. as well as the autopsy report (paragraph 98).**

102. The delegation received complete medical history of Z. for the duration of his stay at the Special Prison Hospital.

102bis. PLEASE, REFER TO THE ATTACHMENT!

#### **Other issues of relevance for the CPT's mandate**

Staff issues

#### Comments

- **The Serbian authorities are encouraged to continue to give a high priority to the advancement of prison staff training, both initial and on-going. In the course of such training, considerable emphasis should be placed on adherence to official policies, practices and regulations of the prison service (including the European Prison Rules). The development of interpersonal communication skills also have a prominent part in training; building sound and constructive relations with prisoners should be recognized as a key feature of a prison officer's professional role (paragraph 99).**

103. A special Center conducts training of staff based on pertinent curriculum for the basic, supplementary, specialist courses and other forms of training (workshops, seminars, conferences), independently or in cooperation with other bodies, institutions and international organizations. Significant part of these trainings is dedicated to presentation of the European Convention on Human Rights and European Prison Rules.

103bis. The Center takes over increasingly important strategic role not only in training of the new staff and existing administration staff, but also in selection and testing of the future staff of the Administration for the Enforcement of Penal Sanctions.

103ter. In 2007 the Training Centre at the Administration for the Enforcement of Penal Sanctions of the Ministry of Justice of the Republic of Serbia expanded its activities and in addition to regular training of the custodial staff and correctional/treatment staff they increasingly conduct training of staff in charge of vocational training and work of inmates, legal staff and accounting staff in the support service, training of commissioners that will pursue implementation of alternative sanctions and training of staff for the special prison regime. On the other hand, operational objectives of the Center imply training of new staff, training for new jobs, new technologies and operating procedures, application of new standards and other regulations, induction of staff for managerial roles, on-going advancement of knowledge in the area of enforcement of penal sanctions, carrier planning, performance appraisal and certificate awards.

Contact with the outside world

#### Recommendations

- **The Law and regulations to be amended so as to ensure that granting visits to remand prisoners is the norm, the refusal of visits the exception (paragraph 100).**

104. Visits to remand prisoners, pursuant to the Code of Criminal Procedure are approved by an investigating judge, i.e. chairperson of the judicial panel. In practice, these visits are regularly approved, and prohibition of visits is only exceptionally ruled when the court finds that the visit may have adverse effect on the proceedings.

- **The practice of systematically reading remand prisoners' correspondence with their lawyers to be stopped immediately (paragraph 101).**

105. Referring to the comment on systematic reading remand prisoners' correspondence with their lawyers, we inform you that this kind of correspondence is not read in prisons, but pursuant to the House Rules, in case of remand, the institution notifies the competent body when a remand prisoner requires to talk to his lawyer and a letter that such remand prisoner wants to send to his lawyer or the lawyer addresses a letter to the remand prisoner. This does not imply systematic reading of remand prisoners' correspondence with their lawyers, but only opens up the possibility, pursuant to Section 75, paragraph 4 of the Code of Criminal Procedure, that the instigating judge may order that the letters, which the remand prisoner addresses to his lawyer or the lawyer addresses to the remand prisoner, be delivered only after the judge reads them, which is resorted to only in case there are reasonable grounds to suspect that the letters are used in an attempt to organize escape, influence the witnesses, or for any other interference with the investigation. Once the investigation is over or indictment is raised without investigation, the remand prisoner may not be prevented from free, private, unsupervised correspondence and communication with his lawyer (Section 75, paragraph 5 of the Code of Criminal Procedure).

- **The existing law and regulations concerning sentenced prisoners' contact with the outside world to be reviewed, in the light of the remarks set out in paragraph 102 (paragraph 102).**

106. Differences in the number of visits are stipulated in the House Rules of correctional institutions in order to motivate sentenced prisoners to participate in realization of the treatment plan. Contacts with family to promote re-socializations are decisive. Therefore, the Law on Enforcement of Penal Sanctions guarantees the minimum number of visits. The House Rules open the possibility of increasing the number by the categories in which the prisoners are classified. In the B category, there is an option to grant special rights within both sub-categories. This is to motivate prisoners to participate more actively in the treatment plan and understand the importance of their responsibility and possible contribution by exemplary behavior in reclassification. Also, at the discretion of the competent team, in order to realize the individual treatment plan, a prisoner classified as B2 category may acquire the extended right to receive visitors and extend the circle of people allowed to visit him.

- **The Serbian authorities to take steps to improve access to a telephone for prisoners in Pavilion VII of Požarevac-Zabela Correctional Institution, in the light of the remarks set out in paragraph 103 of the report (paragraph 103).**

107. Referring to the access to telephone for remand prisoners, the possibility is not open in either laws or by-laws regulating the position and rights of remand prisoners, so that the institution may not give them broader rights than the ones stipulated in the law, since arbitrary treatment of these persons is not allowed because of possible errors that may affect the criminal proceedings. The House Rules in correctional institutions and district prisons regulate that phone calls may take up to 10 minutes. As we have already stated, amendments to provisions covering the position and rights of remand prisoners will be discussed by the task force for amendments to the Code of Criminal Procedure.

#### Comments

- **The Serbian authorities are invited to explore the possibility of offering remand prisoners access to a telephone; if there is a perceived risk of collusion, a particular phone call could be monitored. In addition, the existing legislation should be amended so as to establish a minimum entitlement (i.e. duration of each telephone conversation) as regards access to a telephone for prisoners (paragraph 103).**

108. PLEASE, REFER TO PARAGRAPH 107 OF THIS RESPONSE.

Discipline/solitary confinement

#### Recommendations

- **The Serbian authorities to review the relevant regulations in line with the recommendation made by the CPT in paragraph 132 of the report on its 2004 visit. As regards the role of prison doctors in relation to disciplinary matters, regard should be had to the revised European Prison Rules (in particular, Rule 43) and the comments made by the CPT in its 15<sup>th</sup> General Report (see paragraph 53 of CPT/Inf (2005) 17) (paragraph 104).**

109. Referring to the recommendation to amend regulations on the role of prison doctors in relation to disciplinary matters we inform you that a prison doctor does not participate in the disciplinary proceedings. Medical examination is mandatory before the execution of the already pronounced disciplinary measure of solitary confinement for establishment of mental and physical ability of the sentenced prisoner for this measure. If the medical examination suggests lack of such ability to endure the disciplinary measure of solitary confinement, the enforcement of the measure will be postponed (Section 27. Rulebook on Disciplinary Offences, Measures and Treatment of Sentenced Prisoners).

- **The Serbian authorities to take urgent steps to remedy the shortcomings as regards the provision of bedding, access to a shower and access to outdoor exercise for inmates placed in solitary confinement or disciplinary isolation in Pavilion VII of Požarevac-Zabela Correctional Institution (paragraph 105).**

110. Compliance with recommendations relating to the cells in which the solitary confinement takes place in Pavilion VII will be monitored by the Supervisory Department of the Administration for the Enforcement of Penal Sanctions of the Ministry of Justice of the Republic of Serbia.

#### Requests for information

- **Comments of the Serbian authorities on the fact that, at Požarevac-Zabela and Sremska Mitrovica Correctional Institutions, lying in bed or sleeping during the day continued to be considered as a breach of discipline, despite the fact that such behavior does not appear on the list of disciplinary offences (paragraph 106).**

111. Sentenced prisoners have a day activity timetable. According to that regime day rest and sleeping are scheduled for the time between 15:00 and 17:00 hours. Sleeping at any other time of the day represents a breach of discipline and interruption of the prison routine, so that a reprimand is pronounced. Several such reprimands make up for a disciplinary offence.

“Coercive means”

#### Recommendations

- **The Serbian authorities to take steps with respect to the use of “coercive means” in prisons, in the light of the remarks set out in paragraph 108 of the report (paragraph 108).**

112. We fully agree with comments and objections relating to the records of the use of all coercive means. We still stand by our initial position presented at the beginning of our statement which is that the records are kept, but they could be far more comprehensive and detailed. However, to put it simply, the number of custodial staff is insufficient, there are vacancies to be filled, and there are too many persons deprived of liberty in the institution.

112*bis*. In these situations the staff that work several shifts in a row are referred to provide assistance or carry other type of increased burden make mistakes, and due to the lack of time, the reports are not as detailed as they should be. We do not justify this practice since maximum effort is required at all times, so that we believe that with pertinent orders and internal instructions and particularly with employment of more staff, which is in progress, the desired standards will be attained.



112*ter*. We fully agree with statements presented in paragraph 108 of the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, except that in most situation that we may call critical in terms of necessitated immediate response for maintenance of order and safety it is very difficult (if not impossible) to establish perfect synchronization between the custodial staff and medical staff at any critical moment. However, after an incident, we completely agree that the coordination has to be established to the highest possible degree, pursuant to regulations and standards suggested by the Committee, so that further operations and organization of the institution will be focused accordingly.

Complaints and inspection procedures

#### Recommendations

- **The Serbian authorities to take appropriate steps to ensure that prisoners lodging complaints are not subjected to reprisals (paragraph 109).**

113. With enactment of the Law on Enforcement of Penal Sanctions that came into force on 1 January 2006 the domestic legislation has been mostly harmonized with international standards in the area of enforcement of penal sanctions and protection of rights of persons deprived of liberty. Introduction of two-instance protection system for the persons deprived of liberty, at the Administration for the Enforcement of Penal Sanctions and judicial protection (the final decision violating or limiting any statutory right of a sentenced prisoner during the serving time of his sentence may be appealed against and prisoners may file for judicial protection) as a form of independent control has been introduced. The model which has been in place since 2006 provides the prerequisites for effective protection and exercising of rights stipulated in the Law on Enforcement of Penal Sanctions.

113*bis*. Number of complaint, appeals and actions is higher than last year. In them the sentenced prisoners usually express their dissatisfaction with treatment, complain of inadequate health care, and express their dissatisfaction with the right to annual leave. Complaints are even more variable, since the sentenced prisoners are acquainted with the mode of protection of their own rights.

113*ter*. Referring to the objection and advice to take appropriate steps to ensure that prisoners lodging complaints are not subjected to reprisals, the Administration for the Enforcement of Penal Sanctions conducts training of custodial staff at the Training Center in Niš focusing realization and protection of rights of persons deprived of liberty and implementation of domestic and international documents in this area.

#### Comments

- **The Serbian authorities are invited to remind all penitentiary establishments that prisoners' correspondence with the Ombudsman is strictly confidential (paragraph 109).**

114. Referring to the objection of Ombudsman at the very beginning of implementation of the Law on Ombudsman that they receive complaints of sentenced prisoners in open envelopes, the Administration for the Enforcement of Penal Sanctions immediately instructed all correctional institutions that this mail has to be delivered in sealed envelopes and that it is a duty of each institution to acquaint the sentenced prisoners on the right to address the Ombudsman. Ever since, no objections of this kind have been received.

- **The Serbian authorities are invited to further develop the system of monitoring of penitentiary establishments by independent outside bodies. In this context, the Committee wishes to stress that, to be fully effective, monitoring visits should be both frequent and unannounced. Further, the monitoring bodies should empowered to interviewed detained persons in private and examine all issues related to their treatment (material conditions of detention; custody records and other documentation; the exercise of detained persons' rights, etc.) (paragraph 110).**

115. The Ministry of Justice of the Republic of Serbia submitted an initiative to the National Parliament to set up a body stipulated in the Law on Enforcement of Penal Sanctions as a parliamentary control of the operations of the Administration for the Enforcement of Penal Sanctions. The body will be composed of five members familiar with the area who are, however, not employed at the Administration for the Enforcement of Penal Sanctions who will be authorized to review all documentation, talk to sentenced prisoners, prison staff and granted unlimited right to visit the institutions.

\* \* \*

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

116. Before we proceed with our response to the comment made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment we inform you that patients placed in the Special Hospital in Kovin are not committed on the basis of agreement between their family members and hospital management. Instead, this is an agreement on accommodation and care of patients for whom hospital treatment is not indicated, as stipulated in provisions of Section 61 of the Health Insurance Law. The agreement is signed by the patient him/herself or family members with patient's compliance or patient's guardian in case the patient is deprived of business capacity. A special pricelist has been adopted on the institution level for these cases, which is adopted by the Managing Board of the Special Hospital. We underline that residential care is provided for patients without psychiatric diseases in whom hospitalization is not indicated, but they require certain level of care that is not available at their homes (due to various reasons).

116*bis*. We also focus your attention to the fact that provisions of Section 61 of the Health Care Law regulate the area of health care that is not covered by the mandatory medical insurance. Namely, the mandatory medical insurance of insured persons does not cover health care that implies long term care and home care, as well as care in health institutions and welfare institutions that are primarily provided for the purpose of care and recovery, i.e. assistance in daily activities such as assisted walking, placement to bed and help in getting out of it, bathing, getting dressed, food preparing, oversight of compliance in medication. This kind of care is not aimed at diagnostics, treatment or rehabilitation from disease or injury.

116*ter*. Pursuant to the above the Special Hospital in Kovin, within the available resources and capacities may conclude special agreements on accommodation and care of patients in whom indications for hospitalization are not present.

### **Preliminary remarks**

#### **Comments**

- **The Serbian authorities are encouraged to implement the “Strategy for the Development of Mental Health Care” as a matter of priority (paragraph 113).**

117. In order to achieve on of the measures specified in the Strategy of Mental Health Care Development, i.e. “psychiatry in the community setting”, the Ministry of Health of the Republic of Serbia prepared amendments to the Rulebook on Detailed Requirements for Internal Organization of Health Care Institutions, where services for mental health care in the community setting will be one of the forms of deinstitutionalization of mental patients. They will be one of the forms of internal organizational units of special hospitals for psychiatric diseases and psychiatric departments of general hospitals.

#### Request for information

- **Comments of the Serbian authorities on the fact that the vast proportion of the patients at Kovin Specialized Neuro-Psychiatric Hospital was *de facto* involuntary, even if this was not confirmed by any formal procedure (paragraph 111).**

118. Procedures for admission to treatment and discharge from treatment in any health care institution are regulated by provisions of the Health Care Law and Law on Health Care Records. The specified procedures are applied in the Special Hospital for Psychiatric Diseases in Kovin, except in cases of compulsory referral to treatment in a psychiatric institution, when provisions of Section 44 of the Health Care Law and Sections 45 to 55 of the Law on Non-contentious Proceedings are applied.

118*bis*. Provisions of Section 42 the Health Care Law stipulate duties of patients, i.e. for the duration of their treatment and health care in health care institutions, patients are obliged to comply with general regulations of the institution on the requirements for stay and behavior in it. In case a patient demands to be discharged, in spite of medical or dental warning to the possible consequences of such decision he/she is obliged to sign a written statement to that effect. If a patient refuses to sign the written statement, an official note will be made, entered and kept in the medical file of the patient.

118*ter*. Pursuant to the cited statutory provisions and provision of the Law on Health Care Records, an in-patient health care establishment is obliged to keep the official register of persons placed in the health care institution for each in-patient, a copy of his/her medical file, chart with records of body temperature, prescribed medication and diet, discharge summary and protocol of deceased persons.

118*quarter*. Pursuant to the provision of the Health Care Law and provisions of the Law on Health Care Records, involuntary placement of persons in health care institutions is out of the question. Instead, we comply with rules and procedures for admission and discharge of patients for treatment in health care establishments. Each patient in the Special Hospital who is not committed to psychiatric treatment on a compulsory basis may, upon personal request (written or oral) ask to stop the treatment and leave the hospital. Medical staff are obliged to warn the patients on the consequences that may affect his/her health, but the patient has the final say. We underline that patients are obliged to give written statement to that effect, and in case they refuse to do so, an official note will be made, entered and kept in the medical file of the patient.

### **III-treatment**

#### Recommendations

- **Steps to be taken to ensure that staff at Kovin Hospital protects patients from other patients who might cause them harm. This requires not only adequate staff presence and supervision at all times, but also that staff be properly trained in handling challenging situations/patients (paragraph 114).**

119. Chapter 3 of the Health Care Law (Professional Advancement of Health Care Workers and Associates) regulates continuous education of the staff. Continuous education implies participation at professional meetings and congresses, seminars, courses and all other forms of continuous education (Sections 181 to 187 of the Health Care Law). According to the provisions of the said Law, the Minister of Health passed a by-law, Rulebook on Requirements for Continuous Education of Health Care Workers and Associates specifying the types, curricula, programs, modes, procedures and duration of continuous education, as well as institutions and associations licensed to conduct these continuous education programs, as well as criteria for accreditation of the continuous education programs.

119*bis*. We also make a note of the fact that continuous education is one of the main requirements for renewal of licenses for work in health care institutions and private medical offices. Namely, a health care worker passing the licensing (state) exam is issued the license (work permit, allowing to work on his/he own) by the pertinent competent chamber (i.e. association). The license is issued for a 7-year term. Upon expiry of the term, each health care worker is required to renew the license submitting the evidence on continuous education in compliance with the Health Care Law and substantiating his/her competence for continuation of the work in his/her chosen profession.

119*ter*. According to the above, we may confirm that the duty of all health care workers and health care associates, including the staff of the Special Hospital in Kovin complies with provisions of the Health Care Law and by-laws enacted for implementation of that law, i.e. Rulebook on Issuance, Renewal and Revoking Licenses of Members of Chambers of Health Care Workers and Rulebook on Requirements for Continuous Education of Health Care Workers and Associates, i.e. it is their duty to pursue continuous education in line with their background education and the role they play in the health care system.

## **Patients' living conditions**

### Recommendations

- **Steps to be taken at Kovin Hospital in order to:**
  - \* **carry out, as a matter of priority, a comprehensive refurbishment programme, in particular with a view to improving artificial lighting, ventilation and heating in the dormitories. In the context of this programme, the possibility of transforming the large-capacity dormitories into smaller structures should be considered;**
  - \* **reduce the occupancy levels in the dormitories;**
  - \* **provide the hospital with new furniture and bedding;**
  - \* **provide patients with lockable space and allow a reasonable number of personal belongings;**
  - \* **refurbish the toilet, washing and shower facilities and maintain them in a clean condition; toilets should be fitted in a manner allowing patients some privacy, and the CCTV monitoring should be removed from the toilets in the acute ward;**
  - \* **ensure an adequate supply of diapers for incontinent patients;**
  - \* **ensure that all patients benefit from the possibility of taking a shower at appropriate intervals, according to patients' individual needs;**
  - \* **allow patients to wear as far as possible their own clothes during their stay, and abolish the practice of requiring patients from the acute wards to wear pajamas the whole day (paragraph 121).**
- &

- **The Serbian authorities to take measures to ensure that patients accommodated in Pavilion A of the psycho-geriatric ward of Kovin Hospital (as well as in all other mixed-gender wards of the establishment) are not subjected to inappropriate interaction with patients of the opposite sex (paragraph 122).**

120. Provisions of Section 20 of the Law on Special Competences of the Autonomous Province of Vojvodina stipulate that the Autonomous Province of Vojvodina, through its bodies and in compliance with the law, shall, *inter alia*, establish health care institutions to provide in-patient, secondary and tertiary health care according to the plan of the health care institution network enacted by the Government of the Republic of Serbia. Provisions of the said Law and provisions of Section 48 of the Health Care Law stipulate that the Budget of the Autonomous Province of Vojvodina shall provide funds for investment, major refurbishment and regular maintenance of facilities, procurement of medical and other equipment and vehicles, equipment for the comprehensive integrated health IT system, and resources for other purposes specified in the Law:

\* Funds in the amount of RSD 176,299.65 from the Budget of the Republic of Serbia were transferred to the Special Hospital in Kovin for the period January-April 2008 to cover the expenses of persons committed to compulsory psychiatric treatment, pursuant to Section 18, point 8 of the Health Care Law and Sections 11, 12, 192 and 202 of the Law on Enforcement of Penal Sanctions. The Budget of the Republic of Serbia – Plan and Program of the 2007 National Investment Plan (refurbishment, reconstruction, construction and equipment of health care institutions for treatment of psychiatric patients), includes investment for the preparation of technical documentation (preliminary and master designs) for the facility of the Special Hospital for Psychiatric Diseases in Kovin. The contract was signed with the *North Engineering* company from Subotica. The contract value is RSD 14,687,460.00. The preliminary and master designs are completed, technical supervision carried out, and they were furnished to the Director of the Special Hospital in Kovin in April 2008.

\* Further, the earmarked funds from the National Investment Plan were used to pay the following: design (RSD 14,687,460.00) and technical supervision (1,180,000.00) amounting to the total of RSD 15,867,460.00.

\* The 2008 Budget Law of the Republic of Serbia and decision on distribution of funds from the Budget for implementation of the National Investment Plan excluded the institutions on the territory of the Autonomous Province of Vojvodina from their scope of competence, implying their exclusion from the plans of the Ministry of Health in the 2008 National Investment Plan, as well. Accordingly, further implementation of the said project is now in the competence of the Capital Investment Fund of the Autonomous Province of Vojvodina.

\* The National Health Care Fund provided the amount of RSD 437 million for the operation of the Special Hospital in Kovin with 392 staff pursuant to the contract concluded between the National Health Care Fund and Special Hospital for Psychiatric Diseases in Kovin for 2008.

\* Recommendation of the Committee presented in paragraph 121 of the Report will be analyzed in detail and successively implemented pursuant to the available financial resources of the Republic of Serbia, particularly the budget of the Autonomous Province of Vojvodina and available funds of the National Health Insurance Fund.

120*bis*. Comments made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in paragraphs 116 and 121 of the Report on the visit to the Republic of Serbia relating to the level of hygiene and CCTV in toilets of the Special Hospital are appreciated, but we point out that it is very difficult to maintain satisfactory level of hygiene in all parts of the Special Hospital. Namely, taking into account the fact that patients in the Special Hospital are negligent and lack proper hygienic habits, it is difficult to provide a desired level of hygiene in all areas of the Special Hospital. Of course, it does not mean that the current situation could not be improved. Comments relating to removal of CCTV from the toilets are pertinent in the light of violated privacy of the patients. However, their removal would increase the risk of accidents, primarily suicide, so that the Special Hospital management will reconsider and conduct a detailed analysis.

## **Treatment and regime**

### Recommendations

- **Efforts to be made to expand the range of therapeutic options at Kovin Hospital and involve more patients in psycho-social rehabilitative activities, preparing them for a more autonomous life or return to their families; occupational therapy should be an important part of the long-term treatment programme, providing for motivation, development of learning and relationship skills, acquisition of specific competences and improving self-image (paragraph 125)**

121. Malignant neuroleptic syndrome is an adverse effect of neuroleptic treatment and is a life-threatening condition. Chronic mental patients whose main therapy includes neuroleptic (antipsychotic) drugs account for 90% of patients in the Special Hospital. Since these patients receive the therapy for years, it is only to be expected that some of them may experience problems related to malignant neuroleptic syndrome. Global statistics suggests that the incidence of the syndrome in patients receiving conventional neuroleptic treatment ranges from 0.12 to 2.40%. In 2007, the percentage of patients with this adverse effect in the Special Hospital for Psychiatric Diseases in Kovin was about 1% (5 patients in all). Accordingly, the number of patients in the Special Hospital was within the reference worldwide statistics in terms of the incidence of malignant neuroleptic syndrome.

121*bis*. Generally speaking, methods, procedures and treatment and health care providing in all patients in the Republic of Serbia are in concert with the contemporary state of medical science and practice, and, unavoidably, financial resources available from the National Health Insurance Fund.

121*ter*. The same response was given in respect to the request of the Committee for information, in relation to paragraph 123 of the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on the visit to the Republic of Serbia and presented it in paragraphs 126 & 126*bis* of this response

- **An individual treatment plan to be drawn up for each patient at Kovin Hospital (taking into account the special needs of acute, long-term and forensic patients including, with respect to the latter, the need to reduce the risk of their re-offending), comprising the goals of the treatment, the therapeutic means used and the staff members responsible. Patients should be informed of their individual treatment plans and progress; further, they should be involved in the drafting and implementation of these plans (paragraph 125).**

122. Recommendations that the Committee presented in paragraph 125 of the Report relating to extension of the available treatment options and drawing up of individual treatment plan for each patient will be considered in treatment procedures for all psychiatric patients in health care institutions, special psychiatric hospitals and psychiatric departments of general hospitals.

- **Steps to be taken to ensure that all patients at Kovin Hospital, whose medical condition so permits, are offered at least one hour of outdoor exercise every day (paragraph 126).**

123. Outdoor exercise is available to all patients of the Kovin Hospital. For those whose general health makes it possible there are practically no limitations at to the use of extensive hospital grounds for day walks.

#### Comments

- **The Serbian authorities are invited to make efforts to involve more patients at Kovin Hospital in recreational activities adapted to their needs (paragraph 125).**

124. As to involvement of more patients of the Special Hospital in Kovin in recreational activities adapted to their needs, additional efforts will be made in the future to achieve that. In compliance with the Committee Recommendations on the occasion of amendments to the Rulebook on Requirements for Health Care Providing in Health Care Institutions and Other forms of Health Care Services the Ministry of Health will reconsider the standards and norms, i.e. requirements for health care service providing in special hospitals for psychiatric diseases. Adoption of the said Rulebook is expected by the end of 2008. Once again, we underline that the representatives of the Special Hospital make great efforts to make it possible for patients to wear their own clothes, keep in touch with their family members, but it is unfortunately frequently the case that no family members are interested in keeping the touch with patients in this hospital.

- **The approach consisting of accommodating, at the somatic ward of Kovin Hospital, certain patients who did not suffer from any somatic disease is contrary to the management's declared deinstitutionalization objective; it serves to support the patients' long-term stay and impedes timely discharge (paragraph 127).**

125. We once again underline that all patients in treatment at the Special Hospital for Psychiatric Diseases in Kovin have the need for hospital treatment established. As to hospitalized patients whose indications are not that clear, i.e. those in whom the need for further hospitalization no longer exists, they remain hospitalized only because they have nowhere to go. Namely, staff of the Special Hospital make great efforts to return these patients to their families or place them into appropriate nursing homes. All patients of the Special Hospital are admitted and discharged in the manner stipulated in the Health Care Law and Law on Health Care Records, like any other patient hospitalized in other health care facilities.



Request for information

- **Comment on the fact that many patients were admitted to the somatic ward of Kovin Hospital because of serious side-effects of psychiatric medication, such as the neuroleptic malignant syndrome (paragraph 123).**

126. Malignant neuroleptic syndrome is an adverse effect of neuroleptic treatment and is a life-threatening condition. Chronic mental patients whose main therapy includes neuroleptic (antipsychotic) drugs account for 90% of patients in the Special Hospital. Since these patients receive the therapy for years, it is only to be expected that some of them may experience problems related to malignant neuroleptic syndrome. Global statistics suggests that the incidence of the syndrome in patients receiving conventional neuroleptic treatment ranges 0.12 to 2.40%. In 2007, the percentage of patients with this adverse effect in the Special Hospital for Psychiatric Diseases in Kovin was about 1% (5 patients in all). Accordingly, the number of patients in the Special Hospital was within the reference worldwide statistics in terms of the incidence of malignant neuroleptic syndrome.

126*bis*. Generally speaking, methods, procedures and treatment and health care providing in all patients in the Republic of Serbia are in concert with the contemporary state of medical science and practice, and, unavoidably, financial resources available from the National Health Insurance Fund.

126*ter*. The same response was given in respect to the request of the Committee for information, in relation to paragraph 125 of the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on the visit to the Republic of Serbia and presented it in paragraphs 121 & 121*bis* of this response

- **Whether patients of Kovin Hospital with detected active TB receive treatment following the DOTS programme (paragraph 127).**

127. Relating to the request of the Committee to obtain information on received treatment following the DOTS program, we inform you that the team of experts of the Ministry of Health project entitled TB Control in Serbia through Implementation of WHO DOTS Strategy and Coverage of Populations at Risk, that is implemented with support of donation of the Global Fund to Fight AIDS, Tuberculosis and Malaria visited pulmological institutions and clinics, but also psychiatric institutions for committed patients. It has been established that as soon as TB is suspected, all subsequent diagnostic procedures and necessary treatment that follows in patients affected by TB are conducted at the Special Hospital for Pulmonary Diseases in Bela Crkva. The said institution takes over committed psychiatric patients from the whole territory of the Republic of Serbia for treatment of tuberculosis. The Special Hospital for Pulmonary Diseases in Bela Crkva is involved in all activities of the project for TB control in Serbia, from staff training pursuant to WHO guidelines and DOTS strategy, to drug supply and quality control of diagnostic services and treatment of tuberculosis within the regular supervision system.

## Staff

### Recommendations

- **The Serbian authorities to take steps at Kovin Hospital to:**
  - \* **increase the number and presence of nurses on the wards;**
  - \* **reinforce substantially the team of specialist qualified to provide psycho-social rehabilitative activities (psychologists, occupational therapists, social workers, etc.) (paragraph 129).**

128. The Special Hospital for Psychiatric Diseases in Kovin employs the total of 392 staff, as follows:

- medical doctors 35 (specialists 23, residents 8, GPs 4);
- health care workers with university degree (4-5 yrs post-secondary education) 6;
- health care workers with college degree (2-3 yrs post-secondary education) 20;
- health care workers with secondary degree 178;
- office clerks 32;
- technical workers 121.

128*bis*. The Minister of Health passed a Rulebook on Requirements for Health Care Service Providing in Health Care Institutions and in Private Practice. The Rulebook, *inter alia*, specifies staff requirements (in respect to number, educational profile, etc.) to provide health care services, by the types of institution. According to the Rulebook, norms and standards are set for all health care institution, including special hospitals for psychiatric disorders.

128*ter*. The Ministry of Health is currently in the process of amending the Requirements for Health Care Service Providing in Health Care Institutions and in Private Practice. Enactment of the amendments is expected by the end of 2008. Recommendations of the Committee relating to the need to increase the number of staff, primarily medical staff with secondary and college degrees will be considered carefully on the occasion of the Rulebook amending.

- **Specialized training – both initial and ongoing – to be developed in Serbia for nurses working with psychiatric patients (paragraph 129).**

129. Referring to specialized training of health care workers and associates, we once again underline that pursuant to provisions of the Health Care Law, Rulebook on Requirements for Continuous Education of Health Care Workers and Associates and provisions of the Rulebook on Issuance, Renewal and Revoking Licenses of Members of Chambers of Health Care Workers, continuous education is the right and duty of all health care workers and associates, and one of the main requirements for renewal of license of the Chamber members.

## Comments

- **The CPT trusts that regular meetings in Kovin Hospital, allowing the staff to engage in professional discussions, will be introduced (paragraph 130).**

130. Provisions of Sections 143 through 149 of the Health Care Law stipulates the following bodies of health care institutions :

1) Advisory Council

The Advisory Council is an advisory body of the Director and Managing Board.

Members of the Advisory Council are medical staff with university degree appointed by the Director upon recommendation of respective organizational units.

The Head Nurse of the institution participates in deliberations of the Advisory Council.

The Advisory Council meets no less than once in 30 days.

The Advisory Council:

- 1) discusses and decides on issues relating to professional operations of the health institution;
- 2) proposes programs of professional operations/activities and professional development of the health institution;
- 3) proposes plans of professional advancement of health care workers and associates;
- 4) proposes plans for promotion of quality of work of the health care institution;
- 5) monitors and organizes implementation of internal quality control of professional services provided in the health care institution;
- 6) performs other duties stipulated in the Statutes.

2) Professional Board

Professional Board is a professional body that is in charge of evaluation and adoption of professional and doctrinary principles in health care institutions that incorporate institutes and teaching facilities, and/or health care institutions that are composed of more organizational units.

Membership and operations of the Professional Board are regulated under the health care institution Statutes.

3) Ethics Committee

Ethics Committee is a professional body that monitors providing and implementation on the principles of professional ethics.

Health Care Institution Director appoints the Ethics Committee upon recommendation of the Advisory Council.

Members of the Ethics Committee are appointed from the ranks of medical staff employed at the institution and legal professionals living or working on the territory covered by the health care institution.

Number of the Ethics Committee members is specified in the health care institution Statutes.

Any health care institution Ethics Committee is entrusted with the following tasks

- 1) monitoring and analysis of implementation of the principles of professional ethics in health service providing;
- 2) approval of research trials, medical tests, as well as clinical studies of drugs and medical devices in such health care institution, i.e. monitoring of such trials;

- 3) deciding and evaluation of professional issues relating to the use of parts of human body for medical, research and/or teaching purposes, pursuant to the law;
- 4) consideration and deciding on professional issues relating to the use of infertility treatment measures by biomedically supported fertilization, pursuant to the law;
- 5) monitoring and analysis of ethical aspects of relationships among medical staff and patients, particularly in respect to informed consent for any proposed medical procedure;
- 6) monitoring, analysis and opinion on the use of the principles of professional ethics in prevention, diagnostics, treatment, rehabilitation, research and introduction of new medical technologies;
- 7) contribution to raising of awareness for compliance with the principles of professional ethics in health care service providing;
- 8) advisory function in all aspects of health care service providing;
- 9) elaboration of all other ethical issues encountered in health care institution operations.

4) Quality Promotion Commission

The Quality Promotion Commission is a professional body that focuses continuous quality promotion of health care provided in the health care institution.

The Quality Promotion Commission adopts an annual plan of quality control of the operations and services provided in the health care institution.

The membership, composition and mode of operation of the Quality Promotion Commission are regulated in the health care institution Statutes.

## Means of restraint

### Recommendations

- **Staff at Kovin Hospital to be instructed that means of restraint (including chemical restraint) should never be applied as a form of punishment (paragraph 131).**

131. The Special Hospital in Kovin does not resort to the isolation measure, and the means of chemical restraint (sedation) are used rarely and under strict control and supervision of attending physician and medical staff, and never as a form of punishment. The Special Hospital for Psychiatric Diseases in Kovin more commonly resorts to mechanical restraint (implying fixation of patients by leather belts of soft cotton bands).

- **The practices of applying mechanical restraints in full view of other patients and of requesting patients to help staff restrain another patient to be discontinued without delay; mechanical restraints should not be applied to a patient in the sight of other patients, and the restraint and supervision of patients should be the exclusive responsibility of qualified health-care staff (paragraph 132).**

132. The means of mechanical restrains applied at the Special Hospital for Psychiatric Diseases in Kovin are used in compliance with internal Instructions enacted by all special hospitals for psychiatric diseases in the Republic of Serbia. The said Instructions are made on the basis of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health, adopted at the Plenary Session of the UN General Assembly on 17 December 1991.

132*bis*. On the basis of Principle 11 (Consent to treatment) physical restraint or confinement of patients must not be used except in strictly specified operating procedures of a mental health institution and only when this is the only available means for prevention of imminent harm to such patient or others. These measures must not be used beyond a period absolutely necessary for the purpose. All cases of physical restraint or confinement, indications for the use of such means, their nature and extent have to be recorded in the patient's medical file. Patients under restraints or in confinement have to undergo such measures in humane conditions and under care of qualified members of staff. Personal representative, if any and if relevant, should be urgently notified whenever means of restraint or confinement are used.

132*ter*. According to the said principle, all special hospitals for psychiatric diseases keep special records on mechanical restraints of patients.

- **The Serbian authorities to adopt a policy for the use of means of restraint, in the light of the remarks set out in paragraph 133 of the report (paragraph 133).**

133. The Ministry of Health shall propose that the 2009 Plan for regular external quality control of medical operations and professional practice include: Special Hospital for Psychiatric Disease in Kovin, Special Hospital for Psychiatric Disease in Vršac and Special Hospital for Psychiatric Disease in Novi Kneževac, focusing the use of means of restraints and record keeping of such use of restraints.. We underline that an unplanned (extraordinary) external audit of the quality of operations was conducted in 2007 at the Dr Laza Lazarević Special Hospital for Psychiatric Disease in Belgrade and in 2008 at the Special Hospital for Psychiatric Disease in Gornja Toponica in the vicinity of Niš.

133*bis*. We also inform you that in the course of drafting the new Mental Health Law special attention will be dedicated to the use of mechanical restraints. We believe that we may realistically expect the new Mental Health Law to be adopted by the end of 2009. Before the adoption of this piece of legislation, the Ministry of Health will prepare amendments to the Rulebook on Requirements to Provide Health Care Services in Health Care Institutions and in Private Practice and Rulebook on Requirements for Internal Organization of Health Care Institutions, where community based mental health services will be included as one of the forms of internal organizational units of special hospitals for psychiatric diseases and psychiatric departments of general hospitals.

#### Comments

- **Prolonged and routine restraining of a patient can have no therapeutic justification (paragraph 132).**

134. PLEASE, REFER TO PARAGRAPH 132*BIS*. OF THIS RESPONSE.

- **The management of Kovin Hospital is invited to ensure that the registers of the use of means of restraint are properly kept on all the wards (paragraph 132).**

135. According to the said principle, all special hospitals for psychiatric disorders keep the register of the use of mechanical restraints. Any audit conducted by either the Ministry of Health of the Republic of Serbia or Health Secretariat of the Autonomous Province of Vojvodina or European Committee for the Prevention of Torture may check the records and their accuracy.

## Safeguards

### Recommendations

- **Steps to be taken to ensure that the time-limits foreseen for the initial placement procedure in respect of involuntary civil psychiatric patients are duly respected at Kovin Hospital (paragraph 135).**

136. The procedure for involuntary (compulsory) commitment to a psychiatric institution is regulated by provisions of Section 44 of the Health Care Law and provisions of Sections 45 through 55 of the Law on Non contentious Proceedings, which will be elaborated in greater detail in respect to other appreciated recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

- **Steps to be taken to ensure that psychiatric patients have the effective right to be heard in person by the judge during the involuntary placement procedure. Patients should be systematically informed of the recommendations of the psychiatric commission and the court decision (and be given a copy of these documents), as well as of the legal remedies available to challenge them. The initial placement procedure should also involve the opinion of an independent psychiatrist (paragraph 135).**

137. The said provisions of the Health Care Law stipulate that if a medical doctor, i.e. specialist of psychiatry, i.e. specialist of neuropsychiatry finds that the nature of mental illness of a patient is such that it may threaten life of the patient or other persons, or their property, such patient may be referred to hospitalization, and the attending medical doctor of the competent in-patient facility will admit the patient without his/her consent, pursuant to the law, where on the following day the health care institution multidisciplinary team shall decide on whether to keep the patient committed or not.

137bis. The in-patient facility is obliged to notify the competent court on such commitment 48 hours after the patient has been admitted at the latest.

137ter. Provisions of the Law on Non contentious Proceedings (involuntary placement in mental health institution) regulate in great detail the procedure under which the court decides on such placement and commitment of a psychiatric patient in a pertinent institution, when the nature of diseases it is necessary to limit the freedom of movement and communication of such person with external world. The court shall decide on this issue in an urgent procedure.

- **The Serbian authorities to ensure that the criteria justifying involuntary hospitalization are spelt out more clearly (paragraph 136).**

138. The court decides on involuntary placement of mental patients in pertinent health care facility on the basis of the following criteria:

- Any health care institution committing a mental patient to involuntary hospitalization without a pertinent court decision shall notify the competent court within a three day term.
- Statement of consent to admission has to be given in writing before an authorized person in the health care institution, in the presence of two competent and literate witnesses (excluding the institution staff and direct blood relatives of the patient, up to fourth degree lateral relatives, second degree in-law relatives, spouse or the person escorting the patient to the health care facility).

- Notification that the health care institution submits shall include the data on the person admitted, person escorting him/her to the institution, and, if possible, nature and severity of the disease with substantiating medical documentation.
- Any health care institution shall follow the above procedure even in case a person consenting to hospitalization revokes the consent, and an authorized body of such institution believes that commitment should be prolonged.
- The term for court notification starts as of the consent cancellation.
- The proceedings shall be conducted *ex officio* as soon as the court receives notification from the health care institution or becomes aware of involuntary placement or confinement in a health care institution.
- Requirements for commitment of a person to a health care institution are specified in Section 38 of the Law on Non contentious Proceedings. Namely, the court is obliged to pass a decision on whether the person will remain confined to such institution or not, within a 15-day term if possible, from receipt of notification of such commitment i.e. confinement of a person to a health care institution, or a 30-day term in exceptional circumstances when substantiation of the nature/severity of the disease requires so.
- When the court decides that the admitted person is to remain committed to the health care institution, duration of such commitment will be set, which may not be longer than one year.
- Health care institutions are obliged to submit periodical reports on health status of the committed person.
- The court may, even before expiry of the set term of commitment to health care institution, *ex officio* or upon request of the committed patient his/her guardian of competent body (guardianship, spouse, child or parent) decide on discharge of such person from the health care institution if the court is satisfied that health of the committed person has improved and that reasons for his/her commitment are no longer present.
- If a health care institution finds that the committed person has to remain in treatment even after expiry of the term set by the court decision, 30 days before such expiry, the institution shall file to the court to propose extension of the confinement.
- The court shall pass pertinent decision after thorough examination of the confined patient by no less than two medical doctors of pertinent specialty who will issue their findings and opinion on patient's mental state and capacity to decide; they will hear the patient if possible, and under the condition that such hearing is not detrimental for patient's health. Such examination shall be conducted in judge's presence, unless it is conducted at the in-patient institution.
- The decision on confinement to a health care institution may be contested by the committed patient and his/her guardian, i.e. temporary representative three days after a copy of the decision has been served.
- A person that is subject to this procedure may appeal regardless of his/her mental state.
- Such appeal does not postpone enforcement unless the court decides otherwise on the basis of substantiating reasons.
- The court shall refer the appeal with substantiating documents to the second-instance court without delay. The second-instance court shall rule three days after receipt of the appeal at the latest.

138*bis*. Pursuant to the above, the procedures of involuntary commitment and treatment of patients in psychiatric institutions are fully regulated under the law. Also, the right of appeal (challenging the decision) is available to any participant in this procedure. We underline that all parties in the proceedings are entitled to legal aid *ex officio*, where a lawyer is appointed by the court to protect the rights and interests of the participants.

138*ter.* Provisions of Section 39 of the Health Care Law stipulate the right to complaint as one of the patients' rights. Namely, a patient denied the right to health care, i.e. patient dissatisfied with provided health service and/or treatment of a medical professional or other staff of health care institution may file a complaint to the manager in charge or ombudsman for protection of patient's rights at the health care institution.

- **Steps to be taken to ensure that psychiatric patients are provided with full, clear and accurate information before signing a consent to hospitalization (including on the possibility to withdraw their consent), and that they are not subjected to pressure in this context (paragraph 137).**
- &**
- **Instructions to be issued to the staff at Kovin Hospital to systematically verify the legal competence of patients upon admission, and to take appropriate steps in consequence (paragraph 137).**

139. Health care institutions are obliged to organize the work and operation of ombudsman for patients. Such ombudsman is appointed by the institution Director. Complaint may be filed orally and recorded, or in writing:

- Upon receipt of a complaint, Ombudsman shall immediately, or 5 days after receipt of the complaint at the latest, establish all relevant facts and circumstances related to the received complaint.
- Ombudsman shall notify the organizational unit head, health care institution director and complainant on his/her findings within a three-day term.
- Patient dissatisfied with the findings following his/her complaint may, pursuant to the law, address the health inspection, i.e. competent body of his/her health insurance company.
- Ombudsman shall submit monthly reports on received complaints to the institution director, and semi-annual and annual reports to the Institution Managing Board and Ministry of Health.
- Ombudsman is independent in his/her deliberations so that neither the health care institution director nor any other medical staff may influence his/her operations and decisions.

139*bis.* Pursuant to the above, all health care institutions on the territory of the Republic of Serbia have appointed their respective ombudsmen. In the period January through June 2007 Ombudsman did not receive any complaints except for isolated consultations with patients in relation to legal advice they required (primarily the inheritance rights, etc. ).

139*ter.* In the period July through December 2007 the total of 6 complaints were received. They most commonly related to private problems of the patients, primarily property and legal issues, property inheritance, keeping in touch with family members, and only one oral complaint related to behavior of one of the technicians. All complaints of patients were considered within the set term, although neither related to health care service providing or denial of the right to health care. Ombudsman of the Special Hospital in Kovin conducted consultations with family members of patients i.e. their guardians, and representatives of competent centers for social work and the social worker in charge. Ombudsman responded to all complaints, although neither of the complaints related to health care service providing or denial of the right to health care.



- **All patients (and, if they are incompetent, their legal representatives) to be provided systematically with information about their condition and the treatment prescribed for them, and doctors to be instructed that they should always seek the patient's consent to treatment prior to its commencement. This could be done by means of a special form of informed consent to treatment, signed by the patient or (if he is incompetent) by his legal representative. Relevant information should also be provided to patients (and their legal representatives) during the following treatment (paragraph 138).**  
**&**
- **Steps to be taken to ensure that involuntary psychiatric patients have effective access to legal assistance (independent of the admitting hospital), if necessary free of charge (paragraph 141).**  
**&**
- **A brochure setting out the establishment's routing and patients' rights be drawn up and systematically provided to patients and their families on admission to Kovin Hospital and to all other psychiatric establishments in Serbia (paragraph 142).**

140. The Ministry of Health made great efforts in promotion of patients' rights established under the Health Care Law – right to access to health care; right to information; right to notification; right to free choice; rights to privacy and confidentiality of information; right to decision-making and consent; right to insight into medical documentation; right to confidentiality of the data; rights of patients participating in medical research studies; right to complaint and right to compensation. Pertinent campaigns have been repeated on several occasions, as follows:

- “You have the right” in the period 18 June through 18 July 2007 for promotion of protection of patients' rights. The campaign was aimed at increased population awareness of patients' rights in the area of health care.
- Posters, leaflets and brochures are distributed to all health care institutions explaining patients' rights in the area of health care in simple and understandable language.
- Within the campaign, regional meetings were organized in Novi Sad, Niš, Kragujevac and Belgrade aimed at increased awareness of patients' rights among the health care community.
- On 2 July 2007 in Belgrade the first consultations of ombudsmen for patients' rights were held to discuss aims, strategies and future of activities on protection of patients' rights.
- On 11 November 2007 in Belgrade within the 57<sup>th</sup> Meeting of the WHO Regional Committee the National Conference for Protection of Patients' Rights was held and summarized results of five years of experience in the protection of patients' rights.

140bis. Analysis of work on protection of patients' rights so far, records of the number, type and frequency of patients' complaints indicate that quality of communication among health care professionals and patients is the core problem leading to various complaints of patients and their dissatisfaction. Therefore, in May 2008 the Ministry of Health initiated a campaign entitled “Health with a Smile” to improve the quality of communication among health care professionals and patients and to establish better interpersonal relationships among the health care institution staff. The issue of mobbing was particularly focused in this campaign.

140<sup>ter</sup>. As of 6 May 2008 the Ministry of Health introduced the so called “white line” for patients to ask questions, express opinion, criticize or offer proposals and advice in relation to the operations of health care services. The process of raising awareness of patients on their rights in the area of health care and health insurance is ongoing, and patients are stimulated to address ombudsmen in health care institutions and Ministry of Health for legal counseling and clarifications of their rights. According to the above activities of the Ministry of Health we may underline that promotion of ombudsmen’s role and patients’ rights were promoted comprehensively in health care institutions and Ministry of Health, i.e. these are by no means only sporadic written notes posted on the walls of the Special Hospital.

140<sup>quater</sup>. We shall here highlight some of the provisions relating to patients’ rights stipulated in Chapter V (Human Rights and Values in Health Care and Patients’ Rights) of the Health Care Law relating to the right of patients to information; right to decision-making and consent, and right to consent to participation in medical trials. Provisions of Section 28 of the Health Care Law stipulate:

- That patient is entitled to prompt explanation and information in order to decide whether to consent to the proposed medical procedure/intervention or not.
- The information shall comprise:
  - 1) diagnosis and prognosis of disease;
  - 2) brief description, objective and associated benefit of the proposed medical procedure/ intervention, its duration and possible consequences of undergoing or refusal to undergo such medical procedure/ intervention;
  - 3) type and probability of possible associated risks, painful and other side effects and permanent consequences;
  - 4) alternative treatment methods;
  - 5) possible changes of patients’ conditions after the proposed medical procedure and possible necessitated changes in the lifestyle of the patient;
  - 6) effects of medication and possible side effects of medication
- The information provided by a competent health care worker orally and in the manner understandable for patients, taking into account his/her age, educational background and emotional state – if the patient is not familiar with the official language in use in the health care institution, interpreter shall be provided pursuant to the regulations on the official use of language and alphabet, and if a patient is deaf and dumb, interpreter for sign language shall be provided.
- Patient may waive his right to information, except for the information on the need to undergo a certain medical procedure, associated risks or risks of not undergoing it.
- Only exceptionally, in case of perceived risk of serious deterioration of patient’s health by such information, the attending medical professional may refrain from communicating a diagnosis, course of proposed medical procedure and associated risks, or may mitigate its seriousness, but shall communicate these to the patient’s next of kin.
- Patient is entitled to information on the cost of treatment.
- Competent medical professional shall make note on communicating the information and pertinent data to the patient, i.e. next of kin.

140*quint.* Provisions of Sections 31 through 35 of the Health Care Law stipulate:

- Patient is entitled do deciding freely on everything that relates to his/her life and health, except in cases when such decision may directly endanger life and health of others.
- Generally, a patient may not undergo any medical procedure without his/her consent.
  
- Medical procedures may be undertaken contrary to patients will or will of patient's representative if the patients in incompetent, only exceptionally in cases specified under the law and in compliance with medical ethics.
- Patient may consent to a proposed medical procedure explicitly (orally or in writing) or by silent consent (not explicitly opposing it).
- Consent that was not preceded by required information pursuant to Section 28 of the Health Care Law shall not be binding, and a health care worker resorting to such procedure shall bear the risk of the consequences in such instances.
- Consent to a proposed medical procedure may be withdrawn orally before its commencement, under the conditions stipulated in this Law.
- Patient is entitled to appointment of a person to give consent on his/her behalf, i.e. to be notified on undertaking of such medical procedures in case the patient becomes incompetent for decision making (giving consent).
- A patient is entitled to refuse a medical procedure even in case it may save or prolong his/her life.
- The competent medical professional is obliged to explain the consequences of such decision to refuse a proposed medical procedure and ask for patient's written statement that has to be kept in the patient's medical file. In case a patient refuses to give such statement, an official note shall be made and filed.
- The competent medical professional shall enter the information on consent/refusal of patient to undergo a proposed medical procedure.
- An emergency medical procedure may be performed without patient's consent on unconscious patients or patients who are unable to give consent for other reasons.
- If a patient is unconscious or unable to give consent for other reasons medical procedures at a health care institution may be performed on him/her on the basis of opinion of a multidisciplinary team.
- In case of underage patients or patients deprived of business capacity, medical procedures on him/her may be performed with information and consent of legal representative (parent, adopted parent or guardian).
- Competent health care worker who believes that the legal representative of a patient does not make decisions in the best interest of the child or a person deprived of business competence shall notify the guardianship body without delay.
- Having turned 15 years of age and being mentally competent, a child may give consent to a proposed medical procedure on his/her own.
- A person deprived of business capacity should be involved in decision making on consent to undergo a proposed medical procedure, taking into account his/her level of competence and decision-making capacity.

- **Steps to be taken at Kovin Hospital to set up appropriate facilities in which patients can meet their relatives (paragraph 143).**

141. We believe that all shortcomings, including the lack of appropriate facility in the Special Hospital in Kovin will be resolved in the oncoming period, since the National Investment Plan has earmarked funds for a new building on the hospital grounds.

- **Measures to be taken to ensure that patients at Kovin Hospital – as well as in all other psychiatric establishments in Serbia – are effectively in a position to send confidential complaints to outside authorities (paragraph 144).**

142. PLEASE REFER TO PREVIOUS PARAGRAPHS 139 THROUGH 140TER OF THIS RESPONSE.

- **Steps to be taken to ensure that Kovin Hospital (and all other psychiatric establishments in Serbia) are visited on a regular basis by independent outside bodies responsible for the inspection of patients' care. These bodies should be authorized, in particular, to talk privately with patients, receive directly any complaints which they might have and make any necessary recommendations. Further, the management of all psychiatric establishments should be duly informed of the results of any inspections carried out on their premises (paragraph 145).**

143. In the response of the Ministry of Health to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment it is stated that plans for regular audits of quality of work are planned for 2009, including visits to special hospitals in Kovin, Vršac and Novi Kneževac. In 2007 unplanned (extraordinary) external audit of the quality of operations was conducted at the Dr Laza Lazarević Special Hospital for Psychiatric Disease in Belgrade and in 2008 at the Special Hospital for Psychiatric Disease in Gornja Toponica close to Niš. The regular and unplanned external audits of the quality of operations are conducted by supervisory commission (independent bodies) appointed by the Minister of Health. Reports on conducted regular and extraordinary audits of the quality of operations are submitted to the concerned health care institutions, health inspection supervision the implementation of proposed measures.

#### Comments

- **The recommendation made in paragraph 135 of the report concerning procedural safeguards for patients in the context of the admission procedure (right to be heard in person by the judge; systematic information about the recommendation of the psychiatric commission and the court decision; information on legal remedies; access to independent psychiatric expertise) is equally applicable in the context of the review of involuntary hospitalization decisions (paragraph 140).**

144. PLEASE REFER TO PARAGRAPHS 138 AND 140QUATER OF THIS RESPONSE.

- **The Serbian authorities are invited to make efforts to improve the possibilities for patients at Kovin hospital to make telephone calls (paragraph 143).**

145. Placement of more phone booths and access of telephone to patients are, *inter alia*, a technical issue relating to capacity building and improved accommodation conditions for patients. This is covered by the General Refurbishment Plan and support to the Special Hospital in Kovin.

#### Request for information

- **The prospects of adoption of the new Law on Mental Health (paragraph 134).**

146. The Ministry of Health expects that adoption of the Mental Health Law may be expected by the end of 2009.

- **The comments of the Serbian authorities on the subject of patients' consent to participating in research projects (paragraph 139).**

147. Provisions of Section 38 of the Health Care Law of the Republic of Serbia stipulate that research studies may be undertaken on adult (18+) patients with informed consent only:

- Patient has to give written informed consent after receiving sufficient information on the purpose, objective, procedures, expected outcome, possible risks and adverse effects of the proposed research study.
- Patient has to receive explicit assurance that he/she is free to refuse participation and withdraw consent at any time.
- Only exceptionally, medical research studies may be conducted on underage and other persons deprived of business capacity, but only having his/her immediate benefit in mind and with written consent of his/her legal representative who was properly informed.
- A medical professional conducting a medical study shall always put life and health of patients before the interests of society and science.
- A patient suffering injury to his/her health or body as a consequence of a medical study is entitled to compensation of damages pursuant to the law, regardless of whether it was anybody's fault.
- Before initiation of a medical study, health care institution is obliged to provide liability insurance covering health of patients participating in the study, in case they suffer injury inflicted by that study. Pursuant to the law, it is also required to conclude an agreement with patients specifying the amount of necessary reimbursement for patients participating in a medical research study.
- A patient is entitled to participation in clinical trials of drugs and medical devices, pursuant to the law regulating the area of drugs and medical devices.
- Before initiation of any medical trial, the Ethics Committee of the pertinent health care institution shall make a decision on initiation of the medical trial on patients in this health care institution.
- Conducting medical trials in private practice is strictly prohibited

147*bis*. Pursuant to the said provisions of the Health Care Law, we may confirm that health care personnel are obliged to provide patients with detailed information on medical condition, mode and course of treatment and all other relevant aspects necessary for their informed decision and selection of medical procedures and modes of treatment. Special attention is paid to consent of patients to undergo medical procedures. Health care institutions are obliged to keep pertinent detailed records in medical files of these patients. Health care institutions have introduced special templates that are kept, after detailed information is communicated to the patients and they consent to a proposed medical procedure or refuse to do so, in medical files of these patients. Importantly, special informed consent is required for participation in medical investigational studies, and these may be undertaken only on adults (+18yrs) with business competence. This consent must be given in writing after the patient receives sufficient information on the purpose, objective, procedures, expected outcome, possible risks and adverse effects of the trial. Patients have to receive explicit assurance that they are free to refuse participation and withdraw consent at any time.

\* \* \*

## **Establishments under the authority of the Ministry of Labor and Social Policy**

### **Preliminary remarks**

#### Recommendations

- **The Serbian authorities to step up their efforts to reorganize the system for provision of care to persons with mental disabilities, including both de-institutionalization programs and options for those persons who will not be able to benefit from programs (paragraph 148).**

148. After adopting a Poverty Reduction Strategy, the Government of the Republic of Serbia has in December of 2005 adopted a National Strategy for Development of Social Protection, a document integrating ideas, principles and directions for social security systems reform initiated in 2001 within the Ministry of Labor and Social Policy. These documents represent overarching documents in the process of social security and social protection reform. Two of the defined fundamental directions for development must be emphasized in regards to protecting groups and individuals with special needs, - one concerns developing support services offered to individuals and families in the local community – developing services alternative to institutionalized protection, including poverty reduction; and the other one involves intensifying the deinstitutionalization process for protection of children, the youth and other age groups with special needs requiring particular community and social support. Also, this project provides for improving the quality of institutionalized protection, establishing minimum standards for provided services, and building professional capacities of the current staff.

148*bis*. The National Action Plan for Children, also adopted by the Government of the Republic of Serbia has specifically defined strategic goals for improving the status and rights of children with special needs. Specific goals defined by the National Plan relate to raising community's awareness regarding children and adults with special needs, their basic rights and needs, and their right to participate in social life of the community on equal grounds.

148*ter*. In December 2006 the Government of the Republic of Serbia adopted a Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia, based on, and respectful of human rights, equal opportunity and social inclusion principles. The Strategy defines specific goals and measures for improving support systems and services offered to persons with disabilities, developing their capacities, strengthening their families through adequate support systems, and developing adequate services and departments assisting persons with disabilities in their integration within the community.

148*quater*. A highly alarming state of affairs in the field of protection of children and persons with disabilities in Serbia in 2001, when the reform process was initiated, due to general poverty and decades of prevailing attitude that justifies, and even instigates isolation and exclusion of children and adults with disabilities, especially the ones with severe developmental and health problems, screamed for priority measures for improving living conditions in existing residential institutions. Thanks to international donations, many existing institutions were renovated while investing in staff education and changing their attitudes and awareness about protection of children and adults with disabilities.

148*cinq.* Alongside, the following projects were developed and they involved:

1. Prevention of institutionalized protection of this vulnerable group:
  - first and foremost through developing local community services offering support to natural families with children with special needs (for example, child day care, home assistance, supported living) through Social Innovation Fund' projects, sponsored by the National Investment Plan; projects financed by the Fund for Financing Organizations for People with Disabilities; reform projects implemented by the Ministry of Labor and Social Policy of the Republic of Serbia offering support in developing foster care, particularly specialized foster care,
  - binding instructions of the Minister, introducing a measure of acquiring prior consent from the Ministry of Labor and Social Policy on residential placement of children.
2. Opening up possibilities for the young and adults with special needs to exit residential style of living (building, furnishing, and establishing assisted living services through projects financed through the National Investment Plan, Social Innovation Fund, and other similar projects financed by the local self-governments of big towns and by donors).

### **III-treatment**

#### Recommendations

- **The Serbian authorities to take the necessary measures, in the light of the remarks in paragraph 150 of the report, to protect residents at the Special Institution for Children and Juveniles in Stamnica from other residents who might cause them harm (paragraph 150).**

149. Development of programs and activities that meet the real needs of the residents are in their final stage. They include training of the current staff and development of individual treatment plans for each and every person residing at the "Dr. Nikola Sumenkovic" Special Institution for Developmentally Disabled Children and Juveniles, in Stamnica.

- **A thorough inquiry into the circumstances in which the resident A.'s injuries were sustained to be carried out without delay, and its results transmitted to the CPT (paragraph 153).**

150. The Ministry of Labor and Social Policy of the Republic of Serbia, with the aim of discovering and determining all circumstances involving A.'s injuries, conducted a thorough inquiry examining all operational mechanisms used at the Center for Social Work in Smederevo, and subsequently produced a report on this particular case. The Ministry of Labor and Social Policy Commission upon conducted examination concluded that practices and treatments guardians at the Center for Social Work Smederevo exercised, from the initial point when a need for protecting minor A in December of 2006 was detected, up until today, were in accordance with their entitlements prescribed by the law, and in compliance with the professional work fundamental standards in this area.

150*bis.* The Ministry of Labor and Social Policy referred the case to the Ministry of Justice of the Republic of Serbia in order to initiate investigation within its powers, and to unequivocally determine circumstances surrounding the injuries A. sustained. The Ministry of Justice has undertaken measures within its authority and subsequently submitted a statement issued by the Special Prison Hospital in Belgrade to the Ministry of Labor and Social Policy.



- **Doctors at the Special Institution in Stamnica to be instructed to systematically record in writing all injuries observed on newly-admitted residents. Whenever possible (taking into account the residents' condition), the doctors should request residents to provide an explanation about the circumstances in which the injuries had been sustained. These explanations should also be recorded, together with the doctor's conclusions on the degree of consistency between the resident's explanations and the doctor's objective medical findings. Whenever injuries are recorded which are consistent with allegations of ill-treatment made (or, if the resident is not capable of making a statement due to his condition, whenever the type and character of injuries suggest that they might have resulted from ill-treatment), the record should be systematically brought to the attention of the competent prosecutor (paragraph 153).**

151. The Ministry of Health of the Republic of Serbia organized and conducted an emergency inspection at the "Dr. Nikola Sumenkovic" Special Institution for Developmentally Disabled Children and Juveniles in Stamnica, and submitted a subsequent report to the Ministry of Labor and Social Policy. The report, *inter alia*, states that doctors at the Special Institution are "instructed to systematically record all injuries observed on newly-admitted residents, and all other residents already accommodated at the institutions" and they regularly keep records and protocols of residents' injuries, thus complying with Committees' recommendation.

#### Comments

- **The combination of severe overcrowding, lack of staff and lack of stimulation/activities at Pavilions 1 to 6 (the "upper zone") of the Special Institution in Stamnica resulted in living conditions that could be considered as amounting to inhuman and degrading treatment (paragraph 151).**

152. The measures and activities geared toward improving residents' living conditions at the "Dr. Nikola Sumenkovic" Special Institution for Developmentally Disabled Children and Juveniles in Stamnica are implemented in accordance with the rate determined by the Ministry of Labor and Social Policy Action Plan.

#### **Resident's living conditions**

#### Recommendations

- **The Serbian authorities to persevere in their efforts to create living conditions at the Special Institution in Stamnica which are conducive to the treatment and well-being of residents and provide a positive educational and therapeutic environment and, in so doing, to take into account the remarks set out in paragraphs 154 to 160 of the report (paragraph 162).**

153. The Ministry of Labor and Social Policy of the Republic of Serbia in its planned activities, involving substantial number of social work and other professionals skilled in diverse areas (health care, justice, education), domestic and foreign organizations (Little Big People, Belgrade, DFID, People in Distress /Troubled People/, and so on), will continue with its efforts to improve residents' living conditions at the Special Institution in Stamnica, as instituted by the Action Plan.

- **Steps to be taken at the Special Institution in Stamnica to:**
  - \* **ensure that Pavilion A and Pavilions 1 to 6 are properly ventilated and kept clean;**
  - \* **provide adequate supplies of diapers for incontinent residents;**
  - \* **modify the design of the toilets and showers, so as to offer some privacy to residents;**
  - \* **improve the decoration in Pavilion A (paragraph 162).**

154. Regarding Paragraph 162 of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Report:

- Ministry of Labor and Social Policy issued an order to improve ventilation and cleanliness maintenance at the Pavilion A and Pavilions 1 to 6.
- By using current regular funding resources, adequate supplies of diapers for incontinent residents are provided and supplied on a regular basis.
- Project for redesigning toilets and showers, and improving decorations at the Pavilion A is underway. Starting as of 1 May 2008, the Ministry of Labor and Social Policy has raised the accommodation prices in institutions housing mentally disabled persons by 9.7% and therefore increased their budget for material expenses intended for remedying the observed remarks.

154*bis*. When planning the budget for next year, resources for further improvement of the residents' living standards will be taken into account.

Requests for information

- **Information on the implementation of the measures referred to in paragraph 161 of the report (paragraph 162).**

155. The Ministry of Labor and Social Policy of the Republic of Serbia submitted to the European Committee for the Prevention of Torture and Inhumane and Degrading Treatment or Punishment a detailed Action Plan defining deadlines and financial resources allocated for improving living conditions at the Special Institution in Stamnica (FOR MORE INFORMATION, REFER TO PARAGRAPH 155*ter* OF THIS ANSWER).

155*bis*. In the meantime, on 22 January 2008 the Ministry issued an order to provide every resident at the Special Institution in Stamnica with his/her own bed. A field visit conducted on 8 February 2008 by the social protection inspectors of the Ministry of Labor and Social Policy determined that, indeed, every resident had his/her own bed.

155*ter*. Aided by the inspection service for social protection the Ministry has decided to prohibit admission of new residents starting on 22 January 2008 due to overcrowding. At the same time, a decision was reached to secure RSD 35 million to build and furnish new pavilions, total capacity 110 residents, in the upper zone of the Home in Stamnica. This measure (deadline for implementation is 31 March 2009) aims to provide all resident in the upper zone decent living conditions, without enlarging the capacity of the Home.

155<sup>quater</sup>. Inclusive with the closing date for producing this report, one portion of planned activities and goals prescribed by the Action Plan was realized remedying the observed irregularities in residents' protection at the "Dr. Nikola Sumenkovic" Special Institution for Developmentally Disabled Children and Juveniles in Stamnica:

1) On 9 May 2008 the Government of Serbia adopted a formal Decision on the Network of Residential Institutions in the Republic of Serbia. This Decision orders for two separate Organizational Units to be established at the "Dr. Nikola Sumenkovic" Special Institution for Developmentally Disabled Children and Juveniles in Stamnica: an Organizational Unit for accommodating children and young people with disabilities (children and young people with serious and severe mental disabilities, age over 10), capacity 250 residents, and an Organizational Unit to accommodate mentally disabled adults (accommodating adults with serious and severe mental disabilities – age over 18), capacity 200 residents. The total capacity of the Home is 450 residents.

2) A plan for progressive strengthening of professional capacities and improving residents' protection was created including further development of pertinent treatment plans for special user categories, development of individual treatment plans and prescribing the use of functional assessment instruments for residents with disabilities. Introduction of this new approach – functional assessment of residents with consequent treatment plans, represents a significant turning point in treatment of disabled persons, since previous treatment programs were solely based on the medical diagnosis (the degree of disability) regardless of other abilities disabled persons might possess.

- **In due course, more detailed information about the new accommodation building at the Special Institution at Stamnica (envisaged capacity, function, date of entry into service, etc.) (Paragraph 163).**

156. Information regarding constructing accommodation facility, 850 m<sup>2</sup> in size, submitted to the delegation of the European Committee for the Prevention of Torture and Inhumane and Degrading Treatment or Punishment by the Special Institution's staff is not entirely correct and complete. Previous establishment started the construction process regardless of agreed procedure, in cooperation with the non-governmental organization Little, Big People Belgrade. However, this NGO did not sign any contracts obliging it to finance and conclude this large investment. At the moment it is necessary to determine the intent, the capacities and possibilities for carrying out this large investment to the conclusion and incorporate it into the Budget of the Republic of Serbia for the next year. The facility, constructed and financed by the non-governmental organization Little, Big People Belgrade, itemized in the Action Plan as a short-term goal 1.5, was concluded and given to the Institution for use.

## **Care of residents**

### Recommendations

- **Urgent steps to be taken to ensure adequate and uninterrupted supplies of the necessary psychiatric medication at the Special Institution in Stamnica (paragraph 164).**
- **&**
- **The Serbian authorities to step up their efforts to improve dental care for residents at the Special Institution in Stamnica, including access to conservative dental treatment (paragraph 165).**

157. On 20 June 2008 the Ministry of Health of the Republic of Serbia conducted an inspection control at the “Dr. Nikola Sumenkovic” Special Institution for Developmentally Disabled Children and Juveniles in Stamnica, and submitted the report to the Ministry of Labor and Social Policy. All competent authorities have made great efforts to secure adequate and regular supply of all necessary psychiatric medication for the institution, and to improve residents’ dental care. In the process of planning outside professional work quality control that will be conducted in the field of health protection in social protection institutions the Ministry of Labor and Social Policy indicated the need to give priority to institutions accommodating persons with disabilities.

- **Funding to be provided not only for the drawing up of treatment plans and the training of staff but also for implementing those plans (paragraph 167).**

158. Action Plan for removing irregularities in residents’ protection at the Special Institution in Stamnica outlines the process for instructing employees to implement treatment plans as one of its primary goals, and for that purpose it allocated EUR 10 thousand from the DIFID donation. Developing treatment plans and training employees to implement them are procedures defined within the health services and institutions themselves, and are not included in the Action Plan.

- **Increased efforts to be made to involve all residents at the Special Institution in Stamnica in activities adapted to their needs. Particular attention should be given to developing programs of therapeutic and rehabilitative activities with a view to improving the quality of life of residents, as well as re-socialization programs preparing residents who have the potential to live in the community for discharge. Achieving this goal will require recruiting more qualified staff (paragraph 167).**

159. As one of its goals the Action Plan also outlines defining programs and activities for residents that are take into account and match to their needs and abilities. As a part of the providers’ of social protection services accreditation program process, the planned training plan was accredited and will be implemented at the Special Institution in Stamnica. This training plan involves preparing persons with disabilities for independent living. Along with the training plan, it was suggested to secure additional staff that will be assigned to the organizational unit accommodating adults and elderly.

- **The Serbian authorities to take steps to ensure that all the residents from Pavilions 1 to 6 of the Special Institution in Stamnica have the possibility to spend a reasonable time outdoors every day (paragraph 168).**

160. Employees at the Special Institution in Stamnica received an instruction to do their best to arrange for and provide conditions where residents will spend a reasonable amount of their time outdoors. The Ministry of Labor and Social Policy has conducted a compliance control check and determined that residents do spend a reasonable amount of time outdoors.

Requests for information

- **The comments of the Serbian authorities on the use of barbiturates at the Special Institution in Stamnica (paragraph 164).**

161. The Ministry of Health of the Republic of Serbia embodies the controlling commission that will, by the end of July 2008, conduct an emergency external professional work quality control checks at the Special Institution in Stamnica, assuming inspection against the use of barbiturates. A report on results obtained from the external inspection regarding the quality of professional work and suggested measures will, upon completion, be submitted to the Ministry of Labor and Social Policy by the Ministry of Health Commission.

- **The Comments of the Serbian authorities on the subject of sexual relations between residents at the Special Institution in Stamnica (paragraph 170).**

162. The Ministry of Labor and Social Policy bases its comments on sexual relations between residents in the Special Institution in Stamnica on the Convention on Promoting and Protection Rights and Dignities of Persons with Disabilities. Since this is a highly sensitive issue, especially among residents who are not always able to control their sexual urge, make responsible decisions regarding their own sexual activity, and are therefore vulnerable to sexual abuse, the Ministry of Labor and Social Policy believes, and instructs, that it is necessary to provide such residents with adequate information aiding them in making right decisions, and to undertake appropriate actions to protect them from abuse, sexually transmitted diseases, unplanned pregnancies and other traumas related to their sexuality. During employees' professional training particular attention will be drawn to their attitudes in relation to residents' sexuality, while instituting controlling mechanisms and regular inspections will secure adequate professional conduct and treatment provided by the employees on this issue control.

162bis. The Law on Procedure for Terminating Pregnancy in a Health Institution prescribes conditions and procedure for termination of pregnancy in a health institution. Provisions of Section 2 of this Law regulate that a pregnancy can be terminated only upon request from the pregnant women, whereas for girls younger than 16 and fully incapacitated women it is necessary to obtain written consent from either parent or guardian, or if they are unavailable, consent from the competent guardianship body. Provisions of Section 3 of the mentioned Law provide that pregnancy may not be terminated if such procedure would endanger woman's health or life. Provisions of Section 7 of the Law on Procedure for Terminating Pregnancy in a Health Institution provide that conditions for terminating pregnancy are determined after the 20 weeks of pregnancy.

- **More detailed information on the precise mandate and *modus operandi* of the Ethical Committee referred to in paragraph 170 of the report (paragraph 170).**

163. The Ethics Committee in every health institution, its chairperson and members are appointed by the Ministry in charge of health affairs for a two year term, upon suggestion obtained from the pertinent health institution. The number of members, structure and working methods of the Ethics Committee in a health institution are determined by the Ministry of Health of the Republic of Serbia.

## **Staff**

### Recommendations

- **Steps to be taken at the Special Institution in Stamnica to increase the number of other categories of care staff working with residents (special educators, work therapists, social workers, etc.) (paragraph 172).**

164. Implementation of a pilot project entitled the Minimum Standard of Institutionalized Accommodation Services is underway. The Special Institute in Stamnica is one of the institutions participating in this pilot program. After the pilot part of the project is finished, a procedure for formulation of bylaws follows, which should normatively stipulate the structural standards. Structural standards include a type and a number of service providers. After the new regulation comes into force, new professional personnel may be hired.

## **Means of restraint**

### Recommendations

- **The Serbian authorities to adopt a policy on the use of means of restraint at the Special Institution in Stamnica, in the light of the remarks set out in paragraph 174 of the report (paragraph 174).**

165. The policy on use of means of restraint, advocated by the Ministry of Health and the Ministry of Labor and Social Policy of the Republic of Serbia is determined according to the principles for care and protection of mentally disabled persons and improvement of mental health protection, as adopted by the United Nations General Assembly in 1991. In accordance with these recommendations, employees at the Special Institute in Stamnica have received both written and verbal warnings, issued by the deputy minister, stating that forceful restraint may be used in strictly emergency cases, when such measure is the only resort for prevention of direct or imminent danger to the resident. Physical restraint must be overseen by health workers, limited in duration and must be duly recorded in personal medical file of every resident. By controlling the compliance with the released order, it was confirmed that the record book at the institution was set up, and the employees complied with issued recommendations.

165*bis*. The Ministry of Health and the Ministry of Labor and Social Policy of the Republic of Serbia will organize educational courses on topics covering professional attitude and the implementation of mentioned recommendations, for both health workers and other responsible personnel employed in all social protection institutions caring for mentally disabled persons.

## Safeguards

### Recommendations

- **Steps to be taken without delay to ensure that persons placed in the Special Institution in Stamnica (as well as in all other specialized institutions in Serbia) have the effective right to bring proceedings to have the lawfulness of their placement decided by a court (paragraph 175).**  
**&**
- **The existing placement procedure to be amended in such a way as to introduce an automatic notification to the competent court – with a view to seeking the court's approval – of all decisions to place a person in a specialized institution against the person's will (or at the instigation of the person's guardian) (paragraph 175).**

166. As a show of respect and compliance with Committees' recommendation, a procedure for reconsidering guardianship protection for all accommodated resident at the Special Institute in Stamnica and other institutions was instituted to determine the validity of the existing accommodation process used at the institution. Accommodating persons at a social protection institution is, according to the existing regulations, conducted based on the center for social work decision, while the Ministry of Labor and Social Policy plans to, in the following period, initiate changes in the Law on Non contentious Proceedings, expanding the Law's provisions jurisdiction on regulating that only by Court decision it can be decided against one's will to keep them committed to a neuropsychiatry health institution, and to accommodate them against their will (or upon initiative of the guardian).

- **The existing legislation to be amended so as to introduce a mechanism of regular review of placement in specialized institutions (such as the Special Institution in Stamnica). Further, residents themselves should be able to request at reasonable intervals that the necessity to continue the placement be considered by an independent authority (paragraph 176).**

167. The Ministry of Labor and Social Policy of the Republic of Serbia will undertake activities within its authority to amend existing legal framework (the Family Law and the Law on Social Protection and Social Security of Citizens), and will initiate amendments of other laws (the Law on Non contentious Proceedings). In accordance with given recommendation from the European Committee on the Prevention of Torture and Inhumane and Degrading Treatment or Punishment, it is planned to, within the Law on Social Protection of the Republic of Serbia, define different ways for conducting accommodation reviews, meaning, to conduct regular accommodation reviews every six months replacing current annual revision practice, and to specify that accommodated persons have the right to request such review. The control of the review process will be entrusted to the Institute for Social Work of the Republic of Serbia, as a special professional institution, instead to the Ministry of Labor and Social Policy, which have conducted it so far. Also, mentioned activities will, in the Law on Non contentious Proceedings, as a part of recommended initiative, in point 175 of the Report, for securing adequate court protection, prescribe instruments for conducting regular judicial decisions reviews in regards to accommodation of persons who are not capable of protecting their own rights and interests.

- **The relevant legislation to be amended so as to ensure that all decisions on deprivation of legal capacity are subjected to a regular court review (paragraph 177).**  
**&**
- **The Serbian authorities to take the necessary steps 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. The legal provisions currently in force should also be amended so as to put in place the right for the persons concerned to initiate the procedure for the review of the court decision on deprivation of their legal incapacity. Steps should be taken to ensure that persons concerned have effective access to legal assistance in the context of the above-mentioned procedures (paragraph 177).**  
**&**
- **The Serbian authorities to incorporate into the legislation governing guardianship the 28 principles set out in Recommendation (99)4 of the Committee of Ministers of the Council of Europe concerning the Legal Protection on Incapable Adults (paragraph 177).**

168. In the Republic of Serbia Guardianship of incapacitated persons is regulated by outdated laws. Particularly slow are changes of the rules regulating the process for declaring incapacity. At the moment, an extensive legal system reform is underway in Serbia, where one of the high priorities are persons with disability. This is illustrated through adoption of numerous laws, including the Law on Prohibition of Discrimination against Person with Disabilities, adopted in April 2006, and the Family Law adopted in 2005, signing to the UN Convention on the Rights of Persons with Disabilities, expected to be ratified in the Assembly of the Republic of Serbia. Other steps were also undertaken, such as the Law on Professional Rehabilitation and the Employment of Persons with Disabilities entering the Parliamentary procedure. These laws indicate that Serbia is becoming more aware and agile in recognizing the rights of disabled. However, legal norms regulating guardianship are not modified, rather they are still spread out in various laws and other regulations.

168bis. The Ministry of Labor and Social Policy will up until relevant legislative initiatives are realized, undertake measures to provide guardianship bodies with instructions on organizing guardian care of incapacitated adults incorporating the Recommendations (99)4 of the Council of Europe Committee of Ministers as much as it is possible.

- **The relevant authorities to take the necessary steps to ensure that legal guardians fulfill their duties responsibly and in the interests of the residents (paragraph 178).**

169. The Ministry of Labor and Social Policy of the Republic of Serbia prepared a draft Statute further regulating inventorying and assessing resident's assets, controlling guardians' work, compensating expenses guardians encountered while on duty, and awarding them for good practices. During 2009 training program for guardian professionals on organizing and implementing guardian care will be planned and conducted.



- **Steps to be taken to ensure that resident are informed of their rights and possibilities to lodge formal complaints, on a confidential basis, with clearly designed outside bodies. This information should form part of the contracts signed by residents or their legal guardians. Residents unable to understand the contracts should receive appropriate assistance (paragraph 180).**

170. National regulations do exist (Articles 335 and 338 of the Family Law of the Republic of Serbia), allowing persons of age to lodge a complaint, only when they are capable of understanding their actions. When deciding on admissibility of such complaint, a guardianship body will take into consideration the circumstance of that specific case, keeping in mind what are the best interests for that adult. Mentioned complaints may also be filed by individuals with legal interest, such as relatives, doctors or trustees. Furthermore, the complaint may also be lodged against the guardian institution management. Concerned adults, their guardians or some other legal interested person may lodge mentioned complaint to the Ministry of Labor and Social Policy. The Ministry of Labor and Social Policy will further and more specifically regulate these issues through subsequent bylaws in order to reach full compliance with the Council of Europe Committee of Ministers Recommendation (99)4.

#### Comments

- **The Serbian authorities are invited to introduce a firm legal basis for regular visits to the Special Institution in Stamnica (as well as all other specialized institutions in Serbia) by bodies which are independent of the social care authorities (paragraph 180).**

171. For introducing a firm legal basis for regular visits to the Special Institution in Stamnica (as well as to all other specialized institutions in Serbia) by bodies which are independent of the social care authorities it is necessary to put forward a legislative initiative, which will be initiated by the Ministry of Labor and Social Policy of the Republic of Serbia.

171bis. For now, the Ministry of Labor and Social Policy, since there are no legal obstacles, encourages nongovernmental organizations, and regularly consents to visits to residential social protection institutions, including institutions taking care of mentally disabled persons, as was the case with the Helsinki Committee for Human Rights in Serbia.

- **The Serbian authorities are invited to improve the possibilities for residents of the Special Institution in Stamnica to make telephone calls (paragraph 181).**

172. Measures to provide possibilities for residents to make phone calls are undertaken, ordering that all existing phone jacks are made available to residents, and that they are afforded privacy when making their call. In the budget for the following year resources for securing more available phone lines for residents will be allocated.

Request for information

- **The comments of the Serbian authorities on the long delays in the procedure of deprivation of legal capacity of residents admitted as minors who turned 18 while at the Special Institution in Stamnica (paragraph 179).**

173. Lengthy process of declaring work incapacity for residents admitted as minors, who reached their legal age at the Special Institution in Stamnica, or in any other social protection institution, is not regulated with existing legal decisions. Mentally disabled individuals, unless they are unable to, due to their psycho-physical condition, to make a choice on their accommodation and stay in the social protection institution, must be protected through guardianship body, and may stay in that institution only by consent from their guardians.

173bis. Since it is a fact that competent guardianship bodies do not expediently implement the process of placing minors admitted to social protection institutions under guardianship, mostly based on their parent's request, the Ministry of Labor and Social Policy has sent an order to all social work centers in the Republic of Serbia to conduct an assessment and determine the need for guardianship body or a need for extending parental rights for all residents in social protection institutions for mentally disabled in accordance with Sections from 329 to 333 of the Family Law. The social work centers were also ordered to, depending on the results of a mentioned procedure, with consent from the guardianship body, or upon statement of will of the resident, if it is determined that guardianship is not indicated, organize further accommodation.

- **Confirmation that the objective of clarifying the legal situation of all residents at the Special Institution in Stamnica before the entry into force of the new Law on Health Insurance has been reached (paragraph 179).**

174. With the aim of clarifying legal situation of all residents at the Special Institution in Stamnica, the Ministry of Labor and Social Policy of the Republic of Serbia has issued an order to all social work centers, and guardianship bodies in the Republic of Serbia to do the following within 45 days from receipt of this order:

1. Reconsider expediently applied protection models for all persons accommodated at the social protection institutions for persons with disabilities.
2. Conduct detailed assessment, for all residents at the social protection institutions for persons with disabilities, of the need for undertaking guardianship care or measures for extending parental rights in accordance with Sections from 329 to 333 of the Family Law;
3. Gather the statements of will from residents able to protect their own rights and interests regarding accepting the accommodation at the social protection institution for persons with disabilities.

174bis. Social work centers and guardianship bodies are obliged to submit a report on compliance with the issued order to the Ministry of Labor and Social Policy by 30 July 2008.