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## **Report**

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

**from 9 to 16 October 2017**

The Government of Montenegro has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2019) 3.

Strasbourg, 7 February 2019

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## EXECUTIVE SUMMARY

In the course of the 2017 visit the CPT's delegation reviewed the treatment of persons deprived of their liberty by the police and the conditions of detention of inmates in the country's two prison facilities. The delegation also examined the treatment of psychiatric patients at Dobrota Special Psychiatric Hospital and Podgorica Psychiatric Clinic, and conducted follow-up visits to Komanski Most Institute for People with Special Needs and Ljubovic Centre for Juveniles.

On the whole, the CPT's delegation received excellent co-operation during the visit from the Montenegrin authorities at all levels. That said, when it comes to the implementation of its previous recommendations, the report notes that several long-standing issues remain unaddressed. For example, the lack of implementation in practice of fundamental legal safeguards against ill-treatment for persons deprived of their liberty by the police; inappropriate and prolonged resort to mechanical restraint using metal hand- and ankle-cuffs to fixate inmates to beds in prison establishments; and continued overcrowding and poor conditions at Dobrota Special Psychiatric Hospital. On these latter two issues, the CPT's delegation made immediate observations at the end of the visit.

### Law enforcement

The report notes some overall improvement since the 2013 visit in the treatment of persons detained by the police. Nevertheless, a significant number of allegations of physical ill-treatment by police officers were received. The alleged ill-treatment consisted of punches, slaps, kicks, baton blows and strikes with non-standard objects and the infliction of electro-shocks from hand-held electrical discharge devices. This was said to have occurred either at the time of apprehension or during the pre-investigation phase for the purpose of extracting confessions. The Committee concludes that persons deprived of their liberty in Montenegro still run an appreciable risk of being ill-treated by the police and that there is the need for the police senior management to enforce a multi-faceted strategy to tackle this phenomenon. Further, an analysis of the effectiveness of investigations into allegations of ill-treatment reveals a need to enhance the independence and resources of the Internal Control Department of the Ministry of the Interior. Recommendations are also made to remind prosecutors of the need to carry out comprehensive and timely investigations and to ensure that prosecutorial authorities are not hindered, as was the case following mass protests in October 2015, in investigating cases of alleged police ill-treatment.

In terms of the operational safeguards related to deprivation of liberty by the police, access to a lawyer remains problematic and is still not guaranteed from the outset of a person's deprivation of liberty. The report also points to difficulties for detained persons in receiving effective and prompt access to a doctor, in being able to notify a third party of their detention and in receiving clear information on their rights (in particular as concerns foreign nationals). The Committee also considers that it would be desirable for the National Preventive Mechanism (NPM) to explore in greater depth the manner in which persons are treated when apprehended and questioned by police officers.

The material conditions in police stations have not improved since 2013 and many cells are still not suitable for detaining persons for up to 72 hours due to structural deficiencies such as poor access to natural light, inadequate ventilation, poor conditions of hygiene and irregular provision of food to detained persons.

## **Prison establishments**

The CPT notes with approval the efforts invested in the reform of the penitentiary system since 2013, in particular in relation to the development of a system of alternative sanctions. Nonetheless, clarity is required concerning the long-standing and urgently needed projects to build a prison in Bjelo Polije and a Special Prison Hospital in Podgorica.

The majority of persons met by the CPT's delegation indicated that they had been treated correctly by custodial staff. That said, the report refers to a significant number of allegations of physical ill-treatment consisting of slaps, punches and kicks as well as prolonged fixation to a bed with metal hand- and ankle-cuffs. Another long-standing and persistent problem is the level of serious inter-prisoner violence identified at the Remand Prison and Institute for Sentenced Prisoners (KPD), where the CPT recommends that a clear strategy at the national level be developed and enforced.

As regards material conditions, the refurbishment works conducted at all prison establishments had generally improved matters since the 2013 visit. However, some sections in both establishments continued to display serious deficiencies which should be remedied (e.g. poor hygienic conditions at Pavilion A of the KPD). Problematic levels of prison overcrowding (i.e. below 3m<sup>2</sup> per inmate in multiple-occupancy cells) were also observed in certain sections and the CPT calls upon the authorities to ensure that all prisoners are provided with a minimum of 4m<sup>2</sup> of living space each in multiple-occupancy cells.

In terms of activities and the regime on offer to inmates, the situation remained unsatisfactory, as less than 30 percent of sentenced persons at the KPD were involved in a purposeful activity. The CPT qualifies the regime on offer to remand prisoners as a "relic of the past" as inmates are confined to their cells for 23 hours a day and are offered no activities for months or even years on end. The authorities are called upon to put in place a comprehensive regime of out-of-cell activities for remand prisoners. The report also states that the lack of separation between sentenced juveniles and adult prisoners at the KPD must be remedied.

In relation to health-care services in prison, the CPT expresses its conviction that the transfer of this responsibility to the Ministry of Health could raise standards of service. The CPT also requests clarification regarding the long-standing project to construct a Special Prison Hospital. The health-care units in both establishments visited had recently been refurbished and they were adequately staffed. However, several deficiencies are enumerated, notably: the conduct of medical screening of inmates upon admission; cursory recording of injuries; an absence of confidentiality of medical examinations; the prolonged prescription of benzodiazepines to inmates; and the lack of psychological and rehabilitative activities offered to inmates suffering from drug addiction. Concrete action should be taken to address these issues.

The CPT also recommends that the custodial staffing levels be reinforced and that custodial officers cease to carry truncheons and pepper spray canisters in detention areas. Further, the report calls on the Montenegrin authorities to end the current practice of fixation of inmates in prisons and to end immediately the use of metal hand- and ankle-cuffs and chains to fixate inmates. Action should also be taken to improve the conduct of disciplinary proceedings and the manner in which sanctions are enforced, and consideration be given to ending the measure of solitary confinement as a disciplinary sanction for juvenile prisoners. The CPT also urges that steps be taken to improve contact with the outside world for remand prisoners and that the old-generation minivans for the transport of prisoners be progressively replaced.

## **Psychiatric establishments**

At Dobrota Special Psychiatric Hospital, the chronic overcrowding led to several patients having to sleep on mattresses on the floor and to the discharge of other patients into the community for extended leave, contrary to clinical indications. Further, the situation was exacerbated by the fact that around one third of the patients did not require further hospitalisation but could not be discharged due to the absence of adequate community care facilities.

The CPT found that psychiatric patients were treated respectfully by staff. Nevertheless, it requests to be updated on the ongoing investigation by the Kotor District Prosecutor into a series of episodes of alleged ill-treatment of patients by staff.

In addition to the above-mentioned overcrowding, the material conditions in the chronic and acute wards were poor; they were dilapidated and in need of urgent repair. The CPT also found that the layout of the forensic ward remained carceral and did not provide an adequate rehabilitative and therapeutic environment for patients. Material conditions were also poor and impersonal at Podgorica Psychiatric Clinic.

In terms of treatment, the absence of a structured therapeutic approach and the penury of rehabilitative activities were evident at Dobrota Special Psychiatric Hospital, where treatment remained anchored to pharmacotherapy. The CPT is critical of the prolonged prescription of benzodiazepines and advocates that their prescription should be brought into compliance with the relevant standards of the Montenegrin Agency for Medicines and Medical Devices (CALIMS). The report also urges that a systematic policy on the conduct of autopsies be put in place, which is urgently needed given the significant number of patients who die at the Dobrota Hospital. Recommendations are also put forward to properly regulate the use of means of restraint in line with principles set out by the CPT, and to reinforce the safeguards surrounding the involuntary placement and treatment of patients.

## **Komanski Most Institution for Persons with Special Needs**

The CPT noted the ongoing improvements introduced since 2008. The atmosphere at the institution was relaxed and staff displayed a caring attitude towards residents.

Although living conditions have improved there is still a need to improve the conditions of hygiene in rooms in Ward A and the state of repair of the sanitary facilities. The report acknowledges that a wide range of rehabilitative activities are on offer to residents and the Committee notes with approval the development since 2013 of detailed individual treatment plans.

In terms of health-care provision the CPT considers that the residents would benefit from the presence of a full-time general practitioner. The Committee is very concerned by the prolonged prescription of benzodiazepines and the provision of PRN (*pro re nata*) medication which should be better regulated. Finally, the report reiterates the CPT's previous recommendations that the reinforcement of safeguards on the placement of residents and their periodic review by judicial authorities have still not been implemented in practice.

### **Ljubovic Centre for Juveniles**

The centre offered conditions of detention of a high standard to the various categories of juvenile residents accommodated. Further, staff were respectful of residents and no indication of inter-resident violence was detected. There is however a need to address certain deficiencies such as: the absence of screening for transmissible diseases; the preparation and distribution of medicines to juveniles by educators; and the lack of a clear policy on the use of the so-called time-out rooms for agitated residents. In addition, the Montenegrin authorities should ensure that self-harm is not regarded as a disciplinary offence and should abolish the practice of locking residents in their rooms for prolonged periods in conditions akin to solitary confinement. The CPT also considers that disciplinary sanctions should never lead to the total prohibition of family contacts and that any restrictions on family contacts should be applied only when the offence relates to such contacts.

## I. INTRODUCTION

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

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Montenegro from 9 to 16 October 2017. The visit formed part of the CPT’s programme of periodic visits for 2017 and was the Committee’s fourth visit to the country.

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

- Marzena Ksel, 1<sup>st</sup> Vice President of the CPT (Head of the delegation)
- Vânia Costa Ramos
- Nico Hirsch
- Costas Paraskeva
- Ceyhun Qaracayev
- Dubravka Salčić.

They were supported by Francesca Gordon and Christian Loda of the Committee's Secretariat, and assisted by Boštjan Škrlec, Senior State Prosecutor, Slovenia (expert) and Vesna Bulatović, Tamara Jurlina, Biljana Obradović and Jelena Pralas (interpreters).

3. The list of police, prison, psychiatric and social care establishments visited by the CPT’s delegation can be found in Appendix I.

4. The report on the visit was adopted by the CPT at its 95<sup>th</sup> meeting, held from 5 to 9 March 2018, and transmitted to the Montenegrin authorities on 28 March 2018. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the Montenegrin authorities to provide within **six months** a response containing a full account of action taken by them to implement the Committee’s recommendations and replies to the comments and requests for information formulated in this report.

As regards the recommendations in paragraphs 41, 56, 66, 72 and 93 of the report, the CPT requests that an account of action taken to implement them be provided within **three months**.

**B. Context of the visit and cooperation encountered**

5. During the visit, the delegation held consultations with Zoran Pažin, the Deputy Prime Minister and Minister of Justice, Kenan Hrapović, the Minister of Health, Kemal Purišić, the Minister of Labour and Social Welfare, Dragan Pejanović, the Secretary of State for the Ministry of Interior, Danilo Ćupić, Director General of the Directorate for Supervision of the Ministry of Interior, Milan Adžić, Chief of the Internal Control Department of the Police and Nataša Radonjić, Acting Director General of the Directorate for Enforcement of Criminal Sanctions (ZIKS). It also met senior officials from the Ministries of the Interior and Justice and from the Ministries of Health and Labour and Social Welfare. Further, the delegation held separate discussions with the Council for the Civic Control of the Work of the Police, the District Prosecutor of Podgorica, the Internal Control Department of the Police and the Directorate of Control Affairs.

The delegation also met the Protector of Human Rights and Freedoms of Montenegro, Šučko Baković, Deputy Protector for Prevention of Torture, Zdenka Perović and representatives of the National Preventive Mechanism (NPM) and civil society active in areas of concern to the CPT.

A list of the national and regional authorities as well as non-governmental organisations met by the delegation is set out in Appendix II of this report.

6. On the whole, the CPT's delegation received excellent co-operation during the visit by the Montenegrin authorities at all levels. The delegation had rapid access to all places it wished to visit, was able to meet in private with those persons with whom it wanted to speak and was provided with access to the information it required. The CPT wishes to express its appreciation for the assistance provided by the CPT's liaison officers designated by the national authorities, Ms Dragana Prentić and Ms Jela Vuletić Manthou.

7. The principle of co-operation laid down in Article 3 of the Convention also requires that action be taken to improve the situation in the light of the Committee's recommendations. In this connection, the CPT welcomes the progress made since the 2008 visit at the Ljubović Centre for Juveniles as regards the treatment and living conditions of its residents and activities offered to them. However, the CPT is concerned to note that a number of recommendations made by the Committee after its previous visits have still not been implemented. This relates in particular to the effective implementation of the fundamental safeguards against ill-treatment of persons deprived of their liberty by law enforcement officials, and the inappropriate resort to mechanical restraint and the use of hand and ankle-cuffs or chains to attach prisoners to furniture in prison establishments.

Further, the CPT notes that the situation observed at Dobrota Special Psychiatric Hospital is a direct result of the lack of progress in plans to construct a new forensic psychiatric facility and to establish alternative community-care facilities for long-term chronic patients no longer in need of hospitalisation (see paragraph 85).

Having regard to Articles 3 and 10, paragraph 2, of the Convention, the CPT trusts that the Montenegrin authorities will take concrete measures to address the long-standing issues referred to above.

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

8. On 16 October, the CPT's delegation met representatives of the Montenegrin authorities to inform them of the delegation's main findings. On that occasion, the CPT's delegation invoked Article 8, paragraph 5, of the Convention, and made two immediate observations concerning:

- the inappropriate use of mechanical restraint and the use of hand and ankle-cuffs or chains to attach prisoners to a bed in prison establishments, including the use of such measures as an informal punishment. The CPT's delegation called upon the Montenegrin authorities to end such practices in prisons, and to ensure that the fundamental principles set out in paragraph 71 concerning the use of mechanical restraint are respected;
- the situation of chronic overcrowding observed at Dobrota Special Psychiatric Hospital, which affected every aspect of life there. The CPT's delegation requested that immediate action be taken to provide every patient with a bed, and to stop the practices of releasing patients into the community against clinical indications and accommodating forensic patients together with other patients on the different wards.

These requests were confirmed in a letter sent to the Montenegrin authorities on 26 October 2017, and by letter dated 23 January 2018, the Montenegrin authorities provided information on the action taken in respect of these immediate observations. This information has been considered in the relevant parts of this report.

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

### **A. Police establishments**

#### **1. Preliminary remarks**

9. There have been several significant legislative reforms concerning law enforcement in Montenegro since the CPT's 2013 visit. At the outset of the visit, the Secretary of State for the Interior underlined to the delegation that the CPT's recommendations contained in its 2013 visit report have been taken into account, including the revision currently underway of the 2012 Law on Internal Affairs, the adoption of a new Rulebook on internal organisation and systematisation of the Ministry of the Interior in 2015 and the amendment of the Criminal Procedure Code (CCP) in 2015. The revised CCP has led to the establishment of a Special Police Department within the Criminal Police Department to act upon the instructions of the Special State Prosecutor's Office. The new model aims to solve problems in communication between the police and Prosecutor's Office and to address more effectively corruption and organised crime.

The new CCP has introduced changes to the procedures regulating the deprivation of liberty of criminal suspects. Pursuant to Article 264 of the CCP, the police must immediately inform the prosecutor of the deprivation of liberty of a criminal suspect and they must physically bring the suspect in front of the prosecutorial authority within 24 hours. The prosecutor may prolong the police custody to a maximum period of 72 hours. Further, the police may also summon citizens to a police station for the purpose of collecting information for a maximum period of six hours, in accordance with Article 259, paragraph 2 of the CCP.

10. The delegation's findings indicate some overall improvement in the treatment of persons detained by the police. The number of allegations of ill-treatment by police officers received during the visit was lower than in 2013; nevertheless, further concerted action is required to address the continuing issue of ill-treatment inflicted by police officers.

In addition to developing a police culture which views ill-treatment as unprofessional as well as illegal, it is also important that procedures are in place to ensure that all complaints of ill-treatment by police officers are promptly and effectively investigated. To this end, the delegation had an opportunity to meet with the Internal Control Department of the Ministry of the Interior and with senior prosecutors, and to examine the challenges currently hindering the investigation process into allegations of torture and ill-treatment in Montenegro (see paragraph 17).

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

11. The large majority of persons met by the delegation indicated that they had been treated correctly by police officers at the time of their apprehension and while in police custody, which was a positive development in comparison with the CPT's previous visits. Nevertheless, the delegation still received a significant number of allegations of physical ill-treatment of detained persons by police officers, notwithstanding the fact that the number of allegations had clearly decreased since the previous visit. The majority of the allegations referred to ill-treatment inflicted at the time of questioning by the police with a view to extracting a confession or obtaining information.

The alleged physical ill-treatment consisted of slaps, punches, kicks and baton blows (including to the head), strikes with non-standard objects, banging the detainee's head against a wall, and the use of hand-held electrical discharge devices to administer electric shocks, as well as verbal abuse. The purpose of the ill-treatment was apparently intended in some cases to coerce suspects to admit to certain offences in the pre-investigation phase of criminal proceedings<sup>1</sup>.

12. In some cases, the delegation gathered medical evidence and other documentation, which were consistent with the allegations made by detained persons. For the purposes of illustration reference is made to the following cases:

- i. a person arrested on 1 October 2017 in Tuzi alleged that he had been punched in the head several times by a police inspector at the time of apprehension. Later, while in the car during his transfer to CB Podgorica, he alleged that he had received several electro shocks to his upper legs from a hand-held electrical discharge device by the same police inspector, allegedly for the purpose of extracting the names of the suspect's accomplices. He informed the prison doctor in Spuž Prison that he had been ill-treated by the police at the time of apprehension. The inmate's prison admission medical record contains the allegation of police ill-treatment and records a dark purple violet hematoma under the left eye measuring 2 x 0,5cm, which appears to be consistent with his allegation of having been punched;
- ii. a person arrested on 18 September 2017, alleged that after having been brought under control by the police and while lying on the ground, he had been kicked several times on his legs and arms by police officers. He informed the prison doctor in Spuž Prison that he had been ill-treated by the police at the time of apprehension. The inmate's admission medical record showed an excoriation of the left knee and left wrist and appeared to be consistent with this allegation.

13. As was the case in 2013, several unlabelled and non-standard objects were found in Podgorica Central Police Station by the delegation, including car batteries and metal pincers, a screw driver, a metal rod and a black hood in rooms where detained persons alleged they had been ill-treated, or threatened with ill-treatment.

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<sup>1</sup> i.e. "pred-istražne radnje" which refers to those actions undertaken by the police in the first phase of deprivation of liberty of a criminal suspect.

14. The findings of the delegation during this 2017 visit indicate that persons deprived of their liberty still run an appreciable risk of being ill-treated by the police. While it is notable that the allegations are fewer in number than those found in 2013, which is indicative of action taken by the Montenegrin authorities to reduce ill-treatment by police officers, such action has clearly still not been effective in eradicating ill-treatment. In short, the culture of police ill-treatment has still not been effectively curbed.

In fact, the sheer number of cases received by the delegation in the course of the 2017 visit concerning ill-treatment calls for immediate and determined action by the authorities. The Montenegrin authorities must recognise that the existence of ill-treatment by police officers is a fact, that it is not the result of a few rogue officers but appears to be an accepted practice within the current police culture, notably among crime inspectors. The authorities should vigorously explore all means to ensure that the message of zero tolerance of ill-treatment of detained persons reaches law enforcement officials at all levels; they should be made aware, through concrete action, that the government is resolved to stamp out ill-treatment of persons deprived of their liberty. Combating ill-treatment entails not only the adoption of the appropriate legal norms but also taking the necessary steps to ensure their implementation.

15. In the light of the delegation's findings and observations in the course of the 2017 visit, in the CPT's opinion, it is incumbent on the Montenegrin authorities to take the necessary measures to end ill-treatment by law enforcement officials through a multifaceted approach, comprising: a competitive recruitment process of police officers based upon strict selection criteria; an educational training course for all new recruits with a particular emphasis on advanced methods of crime investigation; the accountability of senior officers for their line management responsibilities; the application of appropriate sanctions (criminal and disciplinary) for the perpetrators of ill-treatment and for those who fail to prevent it; and the existence of effective and independent procedures for examining complaints and other relevant information regarding alleged ill-treatment by police officers.

**The CPT recommends that the Minister of the Interior delivers a strong message that the ill-treatment of detained persons is illegal, unprofessional, and will be the subject of appropriate sanctions. This message should be reiterated at appropriate intervals at the level of regional police directorates. Further, the relevant authorities should ensure that an effective investigation is carried out into every allegation of ill-treatment and that senior officers are held accountable for their line-management responsibilities (see also paragraphs 19-22).**

**The CPT also recommends that in order to dispel speculation about improper conduct on the part of police officers and to remove potential sources of danger to staff and detained persons alike, any non-standard issue objects such as car batteries, metal pincers, screw drivers, metal rods and black hoods should be immediately removed from all police premises where persons might be held or questioned. The Committee finally recommends that appropriate steps be taken to ensure that any objects or potential weapons seized during criminal investigations are entered in a separate register, properly labelled (identifying the case to which they refer) and kept in a dedicated store.**

### 3. Investigations into allegations of ill-treatment

16. In its reports on the 2008 and 2013 visits to Montenegro the CPT described several cases of physical ill-treatment and torture of detained persons by law enforcement officials in respect of which the Montenegrin authorities had not conducted effective investigations.<sup>2</sup> The Committee had been critical of the prosecutorial authorities for not being exhaustive in their investigations and of the lack of co-operation between the police and prosecutors in identifying the alleged perpetrators. In its response to the report on the 2013 periodic visit, the Montenegrin authorities informed the Committee that following the adoption of the 24<sup>th</sup> May 2013 Regulation on Police uniforms, insignia, titles and weapons, all uniformed police officers must now wear nametags and identification numbers on their uniforms in the exercise of their duties.<sup>3</sup>

Further, since the 2013 CPT's periodic visit, the European Court of Human Rights has issued one judgment concerning Montenegro (in the case of *Sinistaj and Others v. Montenegro*)<sup>4</sup> in which it found, *inter alia*, violations of the procedural aspects of Article 3 of the Convention. In the case in question ineffective investigations had been conducted by the Internal Control Department (ICD) and judicial authorities into the allegations of physical ill-treatment of a group of citizens by the police forces in relation to an "anti-terrorist" operation in May 2006<sup>5</sup>.

17. In the course of the 2017 visit, the CPT's delegation examined the system of investigation of allegations of ill-treatment by persons deprived of their liberty and whether such investigations complied with the criteria of effectiveness: whether the persons responsible for carrying out such an investigation are independent and impartial vis-à-vis those implicated in the events and whether the investigations are carried out promptly and thoroughly.

To this end, the CPT's delegation held meetings with the Head of the ICD of the Ministry of the Interior and senior prosecutors and examined a number of files concerning investigations into cases of alleged torture and physical ill-treatment by law enforcement officials. Attention was also devoted in the course of the visit to the specific cases of alleged physical ill-treatment perpetrated by members of the "Special Anti-Terrorist Unit" of the police (*Specijalna Antiteroristička Jedinica*, SAJ) in the context of the October 2015 street protests which had taken place in the centre of Podgorica. Further, the CPT's delegation met with representatives of the Council for Civic Control of the Police, a five-member civilian oversight body of the Montenegrin Parliament mandated to oversee the legality of police actions and to provide recommendations to the Ministry of the Interior and to prosecutorial authorities in that respect.

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<sup>2</sup> See in particular paragraph 26 of the CPT's report on the 2008 periodic visit to Montenegro CPT/Inf (2010)3 and paragraphs 20 and 21 of the CPT's report on its 2013 periodic visit CPT/Inf (2014)16.

<sup>3</sup> See item 21 of the Response of the Montenegrin authorities to the CPT's report on its 2013 periodic visit CPT/Inf (2014) 17.

<sup>4</sup> On 28 July 2015 the European Court of Human Rights issued the judgment *Milić and Nikezić v. Montenegro* concerning the ineffective investigation conducted by the Montenegrin authorities into the case of the beating of two inmates by penitentiary staff at Spuž Correctional Institution (KPD) in March 2009.

<sup>5</sup> The CPT in its report on the 2008 periodic visit to Montenegro had reached the same assessment on the ineffective nature of the investigation into the so-called "Eagle flight" anti-terrorist operation: see paragraph 26 of the CPT's report on the 2008 periodic visit to Montenegro CPT/Inf (2010)3.

18. The ICD of the Ministry of the Interior is mandated to investigate any type of police misconduct on its own initiative or based on complaints by citizens, recommendations of the Council for Civil Control of the Police and the Ombudsman as provided by Article 117 of the Law on Internal Affairs. The ICD examines the legality of the police actions and assesses the veracity of the allegations, if it finds ground for these allegations it submits its conclusions to the competent prosecutor if it identifies possible elements of criminal responsibility by police officers or to the disciplinary prosecutor of the Ministry of the Interior in the case of breaches of the code of ethics. The ICD was staffed by 15 police officers at the time of the 2017 visit (nine in Podgorica and one in each of the Security Centres) and had ten vacant positions. The ICD officials perform their specific tasks in addition to their ordinary responsibilities and do not have the status of investigating police officers which means that they cannot conduct formal criminal investigations or act upon the authority of a prosecutor.<sup>6</sup> The Head of the ICD informed the delegation about the challenges in identifying competent police officers to fill the ten vacant posts.

The CPT's delegation examined 10 cases of alleged physical ill-treatment of detained persons by the police which had been looked into by the ICD since 2014. In respect of four cases, the ICD had found elements indicating police misconduct while the remaining six had been dismissed as unfounded. The control of legality by the ICD appeared to be thorough and timely and the relevant files were being forwarded to the prosecutorial authorities also in respect of those cases which had been assessed *prima facie* as being ungrounded but which could still potentially contain elements of criminal responsibility by police officials.<sup>7</sup> That said, the ICD members were hampered in their work as they had to rely on medical documentation issued by emergency health-care staff to assess the nature of the injuries as they could not order forensic medical examinations of alleged victims.

19. In the CPT's view, an independent authority responsible for the investigation of complaints against the police can make a significant contribution to preventing ill-treatment, provided it is genuinely independent and adequately resourced in order to conduct effective investigations. Ideally, the CPT would prefer the Montenegrin authorities to establish such an independent police complaints body. However, the CPT recognises that this is a longer-term objective and considers that in the shorter term the Montenegrin authorities should take action to reinforce the capabilities of the ICD. In particular, the ICD staff should enjoy the same legal status and powers as investigating police officers in conducting investigative activities under Article 257 of the CCP and liaising with prosecutorial authorities pursuant to Article 44 of the CCP.

**The CPT recommends that the Montenegrin authorities take steps to:**

- **reinforce the staffing of the ICD by filling all vacant positions;**
- **enhance the investigative capabilities of the ICD through the possibility to order forensic medical examinations of the injured party and resort to audio and video devices for the collection of evidence.**

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<sup>6</sup> In accordance with the provisions of Articles 44 and 257 of the CCP.

<sup>7</sup> For example, in respect of three cases which had been initially declared as ungrounded by the ICD the prosecutors had found elements of criminal responsibility and raised indictments in respect of four police officers.

**Further, the Montenegrin authorities should ensure that ICD investigators enjoy the same legal status as investigating police officers under the relevant provisions of the CCP and are properly trained and that the ICD is sufficiently resourced to carry out effective investigations into cases of alleged torture and physical ill-treatment in a timely and thorough manner.**

20. As to the effectiveness of prosecutorial investigations into allegations of ill-treatment, the CPT's delegation examined the relevant files concerning investigations conducted by prosecutorial authorities between 2014 and mid-2017. In the course of this period a total of 45 law enforcement officers had been indicted for the criminal offences of ill-treatment (Article 166a, paragraph 2 of the CC), torture (Article 167 of the CC) and infliction of body injury (Article 155 of the CC) at the national level and 19 had been sentenced to imprisonment or fines.

With the exception of the cases of alleged physical ill-treatment related to the October 2015 street protests in Podgorica (see paragraph 21), the CPT's delegation found that the prosecutorial investigations were conducted in a thorough and timely manner. The files examined showed that prosecutors reacted promptly in ordering a forensic examination of an alleged victim of ill-treatment, collecting relevant evidence (such as e.g. CCTV recordings of police detention facilities), interviewing a wide range of witnesses and challenging contradictory statements by police officers. Consequently, in general, law enforcement officials were either indicted or the criminal proceedings dismissed within a maximum period of six months.

Further, the delegation was also able to observe that whenever a prosecutor issued a decision on the dismissal of criminal proceeding, the senior prosecutor, acting *ex officio* or upon an appeal, exercised a detailed scrutiny of that decision, often highlighting the deficiencies of the initial investigation and ordering a new one (see paragraph 127). That said, in a few cases the CPT's delegation was able to observe that the investigation had not been entirely thorough and independent. For example, the Bijelo Polje Prosecutor investigating an allegation of coerced confession of a detained person in April 2014 by local police officers,<sup>8</sup> decided to dismiss the criminal proceedings based only on the statements of the police officers concerned and without making any attempt to interview the alleged victim. Further, the same prosecutor did not seek an explanation for the contradictions arising from the different statements of the police and the alleged victim.

To ensure that investigations by prosecutors into allegations of ill-treatment by law enforcement officials are effective, **the CPT recommends that the Montenegrin authorities reiterate to all prosecutors the necessity for prosecutorial investigations into cases under Articles 166a, paragraph 2, 167 and 155 of the Criminal Code to be conducted in a comprehensive manner as well as promptly and expeditiously.**

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<sup>8</sup> The case had been transmitted to the prosecutor by the ICD.

21. As mentioned in paragraph 17, the cases of alleged physical ill-treatment inflicted by members of the “Special Anti-terrorist Unit” (SAJ), as well as ordinary police officers during the street demonstrations in Podgorica on the nights of 17, 18 and 24 October 2015, require a separate assessment by the CPT in terms of the effectiveness of the investigations by the competent authorities. During the above-mentioned street demonstrations 21 people complained to various NGOs, the Ombudsman, the ICD and the Council of Civic Control of the Police that they had been subjected to physical ill-treatment by members of the police (especially the SAJ).<sup>9</sup> The alleged physical ill-treatment generally consisted of truncheon blows, kicks and punches; rubber bullets were also fired into the dispersing crowds. In some cases, persons had been physically extracted from their vehicles by police officers and subjected to repeated truncheon blows while lying on the ground. Consequently, 18 persons received medical assistance at the emergency unit of the Podgorica Clinical Hospital Centre.

Two specific episodes of severe beatings by members of the SAJ on 24 October were video-recorded.<sup>10</sup> In the first case, around twenty members of the SAJ stopped a car in the vicinity of the police headquarters, extracted M.M. and proceeded to deliver blows with truncheons to his head and body while lying on the ground, causing him severe bodily injuries which required his hospitalisation.<sup>11</sup> The SAJ members also demolished his car by hitting it with truncheons. As to the second episode, on that same night a dozen SAJ members inflicted repeated truncheon blows to the heads and bodies of two persons as they were lying on the ground (i.e. M.B. and B.V.) in the so-called “Jewellers’ street” (“*Zlatarska ulica*”) causing them light body injuries.<sup>12</sup>

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<sup>9</sup> The Council of Civic Control of the Police has produced a thematic publication under the title: “*Pravo na fizički integritet i ljudska dostojanstvo: oktobarski protesti I primjena policijskih ovlašćenja*” (“Right to physical integrity and human dignity: the October protests and the enforcement of police powers”). The special publication provides an account of all complaints of police misconduct registers in the course of October 2015 together with the assessment of the Council of Civic Control and the response of prosecutorial authorities and other oversight bodies such as the ICD and the Ombudsman.

<sup>10</sup> The recordings can be viewed at the following addresses: <https://www.youtube.com/watch?v=DCeZNEfSdDw>, <https://www.youtube.com/watch?v=R59pSJVtZq4>, <https://www.youtube.com/watch?v=hmRQ4ITYz6g> and <https://www.youtube.com/watch?v=mCm1lxPyouY>. These recordings had been made by citizens from nearby buildings.

<sup>11</sup> According to the forensic medical examination, M.M. sustained the following injuries during his severe beating by members of the SAJ: “fracture of the upper right part of the hip, fracture of the right wrist, hematoma in the left swab region about 4 cm long, hematoma of the left eyelid and the root of the left ear measuring 5x5 cm, scratch on the right half of the stomach area around 1x0.5 cm in length, multiple dotted lobes in the left half of the neck of the size of a child's palm, seven striped hematomas in the area of the outer side of the left upper arm around 5x2 cm to 15x3 cm long, hematoma in the posterior area of the left shoulder the size of a male fist, six striped hematomas measuring 4x1.5 cm to 20x1.5 cm, more blood excoriations in the outer part of the left hip covering an area of 10x7 cm, tram-line hematoma in the outer side of the left hip about 20x1.5 cm long”.

<sup>12</sup> According to the medical examination undertaken at the emergency unit of Podgorica Clinical Centre, M.B. sustained the following injuries during the alleged beating by members of the SAJ: “hematoma on the left part of the costal arch 8x4 cm in size, 15x7 cm hematoma on the left shin”. B.V. when examined by the same health-care unit had the following injuries recorded in a medical certificate: “gluteal hematoma and hematoma of the left superior eyelid”.

22. The Podgorica District Prosecutor informed the CPT's delegation that it had opened a total of ten criminal investigations against unknown perpetrators into episodes of alleged physical ill-treatment and torture of 21 citizens related to the 17, 18 and 24 October 2015 street protests in the immediate aftermath of the events.<sup>13</sup> At the time of the CPT's visit, the above-mentioned investigations had only resulted in the indictment for the crime of torture (according to Article 167, paragraph 2 of the CC) on 24 December 2015 of two members of the SAJ who had voluntarily confessed to their participation in the beating of M.M. In addition, the head of the SAJ was indicted for the crime of aiding and abetting the commission of a crime (pursuant to Article 287, paragraph 2 of the CC) and was sentenced to five months of imprisonment and released on 21 February 2018.<sup>14</sup> In the rest of the cases the Podgorica District Prosecutor was not able to identify the perpetrators of the physical ill-treatment and torture as the members of the SAJ were wearing helmets and gas masks and were not displaying any nametag/identification numbers on their uniforms. In its response to three Constitutional Court decisions<sup>15</sup> the Podgorica District Prosecutor reiterated on 3 November 2017 that after having interrogated 54 members of the SAJ,<sup>16</sup> senior police officials and witnesses of the events who had video-recorded the beatings, it still remained impossible to identify which SAJ members had inflicted the physical ill-treatment in relation to the above-mentioned incidents.

The CPT has recommended in its reports on the 2008 and 2013 visits to Montenegro that the special intervention forces should wear a nametag/identification number when conducting operations.<sup>17</sup> In practice, the lack of implementation of these recommendations has guaranteed the impunity of the perpetrators of the severe beating of the late Aleksandar Pejanović in 2008 at the Podgorica police detention unit known as "*betonjerka*".<sup>18</sup> The fact that, during the October 2015 street protests, after the adoption of the 24<sup>th</sup> May 2013 Regulation on Police uniforms, insignia, titles and weapons as well as the conclusion adopted on 20 October 2015 by the Council of Civic Control of the Police inviting the Minister of the Interior and the Director of Police to comply with the CPT's previous recommendations on this subject,<sup>19</sup> special intervention groups such as the SAJ still wore no nametag/identification number on their uniforms is indicative of a deliberate attempt to frustrate the investigation and an intention to guarantee the impunity of those minded to physically ill-treat persons.

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<sup>13</sup> The investigations related to Articles 166a, paragraph 2 (ill-treatment), 167 (torture), 151 (infliction of serious body injury) and 253, paragraph 2 (destruction of private property).

<sup>14</sup> The Head of the SAJ had admitted that the unit had not produced any report on the use of means of restraint in relation to the operations conducted on 24 October 2015.

<sup>15</sup> The Constitutional Court decisions U-III br. 49/17, U-III br. 50/17 and U-III 354/17 issued respectively on 21 June and 25 July 2017 confirmed the violation of Article 28 of the Constitution of Montenegro and Article 3 of the ECtHR. In the same decisions the Constitutional Court requested the Podgorica District Prosecutor to undertake within three months further investigative activities into the two above-mentioned allegations of physical ill-treatment occurred on 24 October 2015.

<sup>16</sup> 55 members of the SAJ were on duty on the night 24 October 2015, which corresponds to its entire force. One of the members could not be interrogated as he had been deployed to a UN peace-keeping operation.

<sup>17</sup> See paragraph 27 of CPT/Inf (2010)3 and paragraph 21 of CPT/inf (2014) 16.

<sup>18</sup> See paragraph 20 of CPT/inf (2014)16.

<sup>19</sup> See page 13 of the Council of Civic Control of the Police thematic publication under the title: "*Pravo na fizički integritet i ljudska dostojanstvo: oktobarski protesti i primjena policijskih ovlašćenja*" ("Right to physical integrity and human dignity: the October protests and the enforcement of police powers").

By letter received on 23 January 2018 the Montenegrin authorities informed the CPT that following the preliminary observations of its delegation, the Ministry of the Interior had adopted a Rulebook according to which each uniform would in future contain a visible inscription of a combination of letters and numbers which would enable the precise identification of every police officer, including those undertaking a special operation.<sup>20</sup>

**The CPT takes note of the new Rulebook adopted by the Ministry of Interior and would like to receive confirmation from the Montenegrin authorities that the police intervention forces (including members of the SAJ) now wear a nametag/identification number on their uniforms during all operations. Further, the Committee would like to be informed whether the former Head of the SAJ will be subject to disciplinary proceedings after having served his prison sentence. In addition, the CPT considers that the Montenegrin authorities would send a very bad message in their stated fight against impunity if the former Head of the SAJ were to be reinstated in his position as Head of the SAJ.**

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

23. The CPT attaches particular importance to three rights for persons deprived of their liberty by the police: the right of those concerned to have the fact of their detention notified to a close relative or third party of their choice, the right of access to a lawyer and the right of access to a doctor. It considers that these three rights are fundamental safeguards against the ill-treatment of persons deprived of their liberty, which should apply from the very outset of their deprivation of liberty. These rights should be enjoyed not only by criminal suspects, but also by all other categories of persons deprived of their liberty and information about these rights should be delivered without delay and in a language that the detained person understands. In Montenegro, these safeguards for persons deprived of their liberty by the police exist formally under the national law.<sup>21</sup>

24. As regards notification of custody, a person deprived of his/her liberty by a State authority must be immediately informed that he/she has the right to request that a person of his/her choice is informed of the arrest.<sup>22</sup>

The CPT notes positively that the custody registers now devote a specific section to the notification of custody to a third party signed by the detained person and the police custody officer. In addition, at some police stations (such as Danilovgrad) a specific form on third party notification exists recording data concerning whether the right was exercised or refused, which third party was contacted, the date and time and signature of the police officer and detained person.

Nevertheless, a few detained persons interviewed by the delegation alleged that they had not been given any information about their rights, and had therefore not been able to contact their family or a third party.

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<sup>20</sup> This Rulebook on design, technical characteristics, type of material, manner of wearing and expiration date of uniforms of police officers performing special tasks was published in the Official Gazette of Montenegro under no. 76/17 on 17 November 2017. Further, the Ministry of the Interior issued on 29 December 2017 a tender offer for the acquisition of the above-mentioned new uniforms.

<sup>21</sup> Notably, Article 5 of the CCP.

<sup>22</sup> Article 5(1) and Article 180(1) of the CCP.

**The CPT recommends that the Montenegrin authorities ensure that all detained persons are offered the possibility to notify a person of their own choice of their detention from the very outset of their deprivation of liberty.**

25. The right of persons deprived of their liberty to have access to a lawyer is also guaranteed by the Constitution and Article 261, paragraph 3 of the CCP.<sup>23</sup> Further, Article 261, paragraph 4, of the CCP states that if a detained person's own lawyer does not appear within four hours, the police and prosecutor will facilitate contact with an *ex officio* counsel. The prosecutor may exceptionally delegate the questioning of a criminal suspect to the police in the presence of a lawyer (i.e. either *ex officio* or of the detained person's choice).<sup>24</sup>

However, in practice access to a lawyer was problematic and was not properly recorded in custody registers. In many police stations visited (including Kotor and Danilovgrad) custody officers merely stated that no detained person had asked for a lawyer in over a year. Some officers also openly acknowledged that they saw no need for detained persons to have access to a lawyer before they were brought before the prosecutor. It was impossible to verify from the custody records whether detained persons had been informed of and were able to exercise this right. Nevertheless, interviews with detained persons confirmed that they had had no access to a lawyer prior to being brought before a prosecutor.

The findings of the 2017 visit indicate that the right of access to a lawyer at the outset of a person's deprivation of liberty still does not exist in practice. Clearly, this right is still not regarded by law enforcement officials as a safeguard against ill-treatment but rather only as a fair-trial guarantee.

**The CPT calls upon the Montenegrin authorities to ensure that all persons detained by the police are both informed of, and given the opportunity to exercise, their right to access a lawyer from the very outset of their deprivation of liberty by the police. It is particularly important that the lawyer meets the detained person in private at an early stage of the procedure and is present during questioning of the person concerned, as is provided for in the CCP.**

26. With regard to the right of access to a doctor, Article 25 of the Law on Internal Affairs stipulates that police officers will facilitate medical assistance to the persons requiring it, through referral to a medical institution. The information sheet distributed to detained persons in police establishments also refers to the right of detained persons to request medical care from a doctor. Article 268, paragraph 6 of the CCP affords the possibility for criminal suspects, legal counsel or family members to request a medical examination in front of the State Prosecutor; however, persons may be detained for up to 24 hours before being brought before the prosecutor.<sup>25</sup>

In most of the police stations visited no register existed to record whether detained persons had requested, or had had access to, a doctor. An exception was Ulcinj Police Station, which had proactively created a register of people requesting to see a doctor.

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<sup>23</sup> Pursuant to Article 261, paragraph 3, of the CCP a detained criminal suspect must be allowed to contact a legal counsel by phone or other means of electronic communication and the prosecutor may assist him/her in finding a lawyer.

<sup>24</sup> Pursuant to Article 261, paragraph 5 of the CCP.

<sup>25</sup> Pursuant to Article 264, paragraph 3 of the CCP.

As was the case in 2013, persons who alleged physical ill-treatment by the police claimed that they had not been offered the possibility of seeing a doctor during their initial custody by the police, and that they only saw a doctor after they had been brought before the prosecutor (who could order a medical examination) or upon admission to the Remand Prison.

**The CPT calls upon the Montenegrin authorities to ensure that persons deprived of their liberty by the police are expressly guaranteed the right of access to a doctor from the very outset of their deprivation of liberty. In addition, it should make clear that a request by a detained person to see a doctor would always be granted; it is not for police officers, nor for any other authority, to filter such requests.**

27. Information sheets in several languages containing a reference to all the above-mentioned safeguards against ill-treatment were available during the 2017 visit. Custody officers and detained persons were required to record that these forms had been distributed. Nonetheless, the vast majority of detained persons interviewed alleged that they had not been provided with a written information sheet and had been given no information on their rights from the outset of their deprivation of liberty by the police. In some police stations visited (for example, Danilovgrad), over half of the signatures attesting receipt of the information by detained persons were missing.

**The CPT once again calls upon the Montenegrin authorities to take steps to ensure without further delay that all persons detained by the police are fully informed of their rights. This should be ensured by the provision of clear verbal information at the very outset of deprivation of liberty, to be supplemented upon arrival at police premises and by the systematic provision of the above-mentioned information sheet.**

28. Moreover, the delegation received a considerable number of allegations that detained persons who were foreign nationals were questioned by the police and made to sign documents that they did not fully understand, that they were not informed of their rights in a language that they could understand and that they were not provided with an interpreter until a later stage, often when they arrived at court. **The CPT recommends that effective steps be taken to ensure that detained foreign nationals who do not understand Montenegrin are promptly provided with the services of an interpreter and are not requested to sign any statements or other documents without such assistance. Further, written information on the rights of detained persons should exist in the most commonly spoken foreign languages, and the authorities should ensure that all foreign national detainees are actually offered such information sheets in practice.**

29. According to Article 259, paragraph 1 of the CCP fundamental legal safeguards should also apply to persons who may be summoned by the police for the purpose of gathering information on a criminal offence for a maximum period of six hours<sup>26</sup>. Some police stations kept a record in the custody registers of such “informative talks” (i.e. Cetinje, Ulcinj Police Stations), whereas some (for example, Tivat Police Station and Budva Security Centre) did not. The CPT’s delegation was informed by police officers that the use of such registers was no longer considered to be mandatory after the adoption of the current CCP in 2009.

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<sup>26</sup> Article 259 of the CCP stipulates that the summons inviting a person to a police station for the purpose of gathering information on a criminal offence must specify that he/she may be accompanied by a lawyer.

**The CPT recommends that the Montenegrin authorities ensure that whenever a person is taken or summoned to a police establishment for the purpose of gathering information on a criminal offence, his/her presence is always duly recorded. In particular, the records should specify who was brought in or summoned, by whom, upon whose order, at what time, for what reason, in which capacity (suspect, witness, etc.), to whom the person concerned was handed over and when the person left the police premises.**

30. The legal time-limits for police custody were generally respected. However, the delegation did find that not all movements out of police custody (for example, to the court or prosecutor) were recorded. This meant that several hours could remain unaccounted for in the custody records.

The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced if a single and comprehensive custody record were to exist for each person detained, on which all aspects of his/her custody and action taken regarding them would be recorded, including each time the person was taken in and out of the cell. Thus, **the Committee recommends that once a detained person has been placed in a cell, all instances when he/she is subsequently removed from the cell should be recorded; that record should state the date and time the detained person is removed from the cell, the location to which he/she is taken and the officers responsible for taking him/her, the purpose for which he/she has been taken, and the date and time of his/her return.**

## **5. Monitoring and complaints procedures**

31. The Montenegrin NPM undertakes monitoring of police detention facilities. Police stations are also subject to external monitoring by civil society bodies and the Ombudsperson, among other bodies.

However, as was the case during the CPT's previous 2013 visit, the delegation gained the distinct impression that this monitoring activity mainly focused on the material conditions of police custody, and often did not extend to interviewing remand prisoners about their prior custody and treatment in initial police detention<sup>27</sup> Moreover, the authorities informed the delegation that they had not been made aware of any issue involving police ill-treatment by the NPM and had been led to believe that ill-treatment in police custody was no longer a problem.

**In the light of the numerous allegations of police ill-treatment that the delegation received during the 2017 visit, the Committee considers that it would be desirable for the NPM to explore in greater depth the manner in which persons are treated when apprehended and questioned by police officers.**

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<sup>27</sup> See in particular the 2015 Annual Report of the Montenegrin NPM ("*Izvještaj Nacionalnog Preventivnog Mehanizma za 2015. Godinu*"), page 58.

## **6. Conditions of detention**

32. The conditions of detention in the police stations visited still displayed a number of shortcomings as had been the case during the CPT's periodic visit in 2013. Cells in most police stations visited possessed a means of rest with mattresses and blankets, a ventilation system and a call bell. However, deficiencies were found in every facility including poor access to natural light (Podgorica and Kotor Security Centres and Tivat Police Station), insufficient access to artificial light (Tivat and Ulcinj Police Stations), insufficient ventilation (Podgorica Security Centre, Ulcinj and Cetinje Police Stations), dilapidated conditions and crumbling walls, cracked floors and roof (Danilovgrad and Tivat Police Stations) and a few cells were found to be of an insufficient size, measuring some 4.5m<sup>2</sup> or less (Bar, Budva and Kotor Security Centres and Tivat Police Station).

Notably, the conditions at Tivat Police Station, situated within a 'temporary' building dating back to 1980, were particularly deplorable as regards both the detention area and the inspectors' offices, including poor access to natural light, insufficient access to artificial light, dilapidated conditions and cracked floors and roof and cells of an insufficient size.

Moreover, many of the police stations did not offer even basic hygiene products to detained persons, such as toilet paper. The provision of food for detained persons was irregular at all police stations visited; generally, no food was provided during the first 12 hours of detention, and thereafter its provision was sporadic. Apparently, custody officers often had to buy the food for detainees with their own money. Finally, the police establishments visited also lacked the facilities to offer detained persons any access to outdoor exercise.

33. Overall, the situation has not improved since the previous visit in 2013, and concerted action to improve the conditions of police detention is required. Moreover, this situation is totally unacceptable given that the maximum duration of police detention of criminal suspects can be for as long as 72 hours.

**The CPT reiterates its recommendations that immediate steps be taken to remedy the deficiencies in the police stations referred to above.**

**Further, as regards Tivat Police Station in particular, given the deplorable conditions, the CPT recommends that this police establishment should be closed down without delay. The CPT also recommends that the Montenegrin authorities ensure that a sufficient budget is allocated for the regular and systematic provision of food for detained persons from the outset of their deprivation of liberty and that basic hygiene products are provided systematically to all detained persons (such as toilet paper, toothbrush, towels, etc.). The situation should be subject to periodic external review.**

**Moreover, the CPT recommends that police custody cells of 5 m<sup>2</sup> or less should not be used for holding detained persons overnight.**

**Lastly, the Committee recommends that the Montenegrin authorities take measures to ensure that all persons held in police custody for 24 hours or more are offered outdoor exercise on a daily basis.**

34. The CPT has concerns over the safety of detained persons transferred in police vehicles (i.e. minivans). In the course of the visit, the CPT's delegation inspected several old-generation police minivans at different police establishments which were equipped with a bench within a metal cage located behind the driver's seat. Detained persons were systematically handcuffed. Moreover, they were not offered any safety belts, which meant that they were at risk of injury, not only in the case of an accident but also if the vehicle had to brake suddenly.

**The CPT recommends that the Montenegrin authorities ensure that all transportation of detained persons in a police vehicle is carried out in a humane, secure and safe manner.**

## **B. Prison establishments**

### **1. Preliminary remarks**

#### a. overcrowding

35. During the 2017 periodic visit the CPT's delegation was able to assess the commitment of the Government of Montenegro to improve conditions of detention in prisons. In this context, it notes the adoption of the new Strategy for Execution of Criminal Sanctions and the reforms underway: since its previous visit in 2013 criminal legislation has been revised,<sup>28</sup> the prison population has decreased slightly due to a greater resort to conditional and community sanctions (such as work in the public interest)<sup>29</sup> and some renovation and construction works have taken place at all prison establishments nationwide. Nevertheless, there remain various issues that continue to hamper the penitentiary establishments (such as the poor staffing levels, the practice concerning the use of restraints and fixation and the lack of a purposeful regime for all inmates),<sup>30</sup> which need to be addressed to ensure that reforms actually translate into better overall treatment of prisoners.

36. As of October 2017, the overall prison population of Montenegro stood at 1,184 while the official capacity of the prison estate was 1,325. There has been a slight reduction in prisoner population since 2013 and an increase in the overall capacity of the prison estate of around 250 places;<sup>31</sup> nevertheless, overcrowding was observed in parts of Bijelo Polje Prison, the KPD and the Remand Prison. In particular, the number of remand prisoners remains very high (some 30% of all inmates), a number that has stayed approximately the same since 2013. Moreover, these remand prisoners can remain in prison for long, if not excessively long, periods of time in remand (in some cases, for up to 3 years).

37. As regards the refurbishment of the prison estate, in 2013 the CPT had been informed of the plans of the Montenegrin authorities to construct a prison for long sentences in Podgorica, a Special Prison Hospital and an additional building at Bijelo Polje Prison. These plans had not materialised by the time of the time of the 2017 visit. At the outset of the visit, the CPT's delegation was informed that feasibility studies for the construction of a new prison in Bijelo Polje, as well as a Special Prison Hospital for the execution of security measures of mandatory psychiatric treatment, had been finalised (see also paragraphs 50, 58 and 86).<sup>32</sup> **The CPT would like to receive further details of these plans (capacities of the new establishments, projected entry into service, funding status, project design and layout etc.).**

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<sup>28</sup> Such as the Criminal Code and Code of Criminal Procedure, Official Gazette of Montenegro 57/09, 49/10, 47/14, 2/15 and 35/15 and the Law on Enforcement of Sentence of Imprisonment, Fines and Security Measures (June 2015), Official Gazette of the Republic of Montenegro 36/2015.

<sup>29</sup> Following the adoption in 2014 of the Law on Enforcement of Conditional Sentences and Work in the Public Interest. In June 2016 there were 75 cases of sentences of imprisonment which had been commuted and were being executed as work in the public interest (45 more cases were being assessed).

<sup>30</sup> See below, paragraphs 48, 51, 53, 68 and 70.

<sup>31</sup> At the time of the 2013 periodic visit, the prison system accommodated 1,324 inmates for a capacity of 1,070. The additional 255 new places had been created as a result of the refurbishment work conducted at the KPD and Remand Prison.

<sup>32</sup> In particular, the Government of Montenegro had passed a decision on applying for a loan from the Council of Europe Development Bank (CEB) for funding the construction of the Prison in Bijelo Polje.

38. As repeatedly highlighted by the CPT in its previous reports to the Montenegrin authorities, providing additional accommodation is unlikely to offer a lasting solution to the problem of prison overcrowding, without in parallel adopting policies designed to limit the number of persons sent to prison and to adequately implement alternatives to imprisonment, especially for certain categories of prisoner, such as those on remand.

**The CPT reiterates its recommendation that the Montenegrin authorities pursue their efforts to combat prison overcrowding taking into account the relevant recommendations of the Committee of Ministers of the Council of Europe, in particular Recommendation Rec(99)22 concerning prison overcrowding and prison population inflation, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and Recommendation Rec(2010)1 on the Council of Europe Probation Rules, Rec(2017)3 on the European Rules on community sanctions and measures. The Committee would like to receive updated information on the measures being taken to tackle prison overcrowding. In particular, the Committee would like to be informed about the steps that the authorities are taking to reduce the number of remand prisoners, as well as to reduce the length of imprisonment on remand.**

b. prison establishments visited

39. The CPT's delegation paid follow-up visits to the Institution for Sentenced Prisoners (KPD), the Remand Prison (all located within the Spuž Complex on the northern outskirts of Podgorica) and the Prison of Bijelo Polje.

40. The *KPD* at Podgorica, the main national prison establishment for prisoners sentenced to more than six months (official capacity 751), was holding 642 inmates at the time of the visit (including 21 women and 10 juveniles). The establishment had closed and semi-open sections.

The *Remand Prison*, located in an independent building within the Spuž Complex, held 327 remand prisoners at the time of the visit (including 98 foreign nationals and 14 female inmates, but no juveniles) for an overall capacity of 284.

*Bijelo Polje Prison*, built in 1948, is situated in the centre of Bijelo Polje town. With an official capacity of 115, at the time of the visit, the Prison held 91 prisoners (37 on remand, of whom 14 were foreign nationals and 54 sentenced). There were no women or juveniles being held at the time of the visit.

## 2. Ill-treatment

41. The vast majority of the inmates interviewed by the delegation at the KPD, the Remand Prison and Bijelo Polje Prison stated that they had been treated correctly by prison staff.

Nevertheless, a significant number of allegations of physical ill-treatment and/or of verbal abuse of inmates by prison staff were received at the *KPD*. The alleged physical ill-treatment consisted of slaps, punches and baton blows, as well as intimidation and verbal abuse by prison officers.

For example, an inmate alleged that following an incident of inter-prisoner violence in 2016, five guards entered his cell and proceeded to punch him and hit him with batons. The inmate made a formal complaint to the prison management, which informed the delegation that it had passed this complaint on to ZIKS and were unaware of its progress. The guards implicated continue to work at the KPD.

Equally, there were a number of cases of prolonged fixation of inmates to a bed for several days at a time using in some cases metal handcuffs to attach their hands as well as metal chains to attach their feet. This could be, and had been in practice, ordered by security staff for reasons of disobedience (see paragraph 70). The CPT considers that such a practice may well amount to inhuman and degrading treatment. For example:

- i. One inmate alleged that, in August 2017, a prison guard slapped him on the face several times for missing work for medical reasons, in an office outside of CCTV coverage but in the presence of another guard. He was then transferred to a disciplinary cell where he was handcuffed to the bed for several days and told that should he complain, he would be punished. This inmate also alleged that the previous year (2016) he spent 6 days fixated to the bed in the disciplinary cell by metal handcuffs on the hands and chains on his feet and only saw the doctor once during this period. The fixation records are consistent with these allegations, although the release time from the handcuffs had not been filled in.
- ii. Another inmate alleged that in January 2016, following an incident of inter-prisoner violence, six guards subjected him and a second prisoner to punches and baton blows to their heads. The inmate was then shut outside in the caged courtyard of the individual disciplinary cell in pyamas in winter conditions for a couple of hours, and thereafter transferred to a disciplinary cell and on the superior officer's orders was fixated for seven days by metal handcuffs to the bed. He was released only to go to the toilet and one hand was released to eat his meals. After seven days he was seen by a doctor, due to persistent headaches. He was then fixated again for another 6 days. After 13 days of fixation he was released and returned to the main prison, but had lost his privileges and had to work for no pay. The fixation records are consistent with the timeframes and indicate that the reason for fixation was 'upon the orders of a superior officer'.

**The CPT recommends that a firm message be delivered to staff at the Institution for Sentenced Prisoners (KPD) that physical ill-treatment and verbal abuse of prisoners are not acceptable and will be punished accordingly.**

**The CPT also calls upon the Montenegrin authorities to end the current practice of fixation of inmates in prisons and requests that it be sent information setting out the concrete action taken to bring an end to this measure within 3 months** (see also paragraph 72).

42. No allegations of ill-treatment by prison staff received directly by the delegation at the *Remand Prison*. However, the delegation was informed by the management of the prison of two inquiries into possible incidents of ill-treatment from January 2015 and July 2017 respectively involving staff use of force in cases of inter-prisoner violence. In one of the cases, there had been an internal investigation with an administrative offence imposed for excessive use of force by a staff member and the relevant staff member had retired. In the other case, a police enquiry was still underway.

**The CPT would like to be informed of the outcome of the above-mentioned July 2017 case involving staff use of force at the Remand Prison.**

43. At *Bijelo Polje Prison*, the delegation did not receive any allegations of ill-treatment. On the contrary, a relaxed atmosphere was evident between staff and inmates at this prison.

44. The information gathered by the delegation indicated that episodes of inter-prisoner violence and intimidation were relatively frequent at both the *Remand Prison* and the *KPD*. This included incidents of prisoner attacks on other prisoners and allegations of intimidation in cells among prisoners. Moreover, the authorities informed the delegation that, since 2014, 196 disciplinary sanctions had been imposed on inmates nationwide in relation to episodes of inter-prisoner violence.

The Committee wishes to emphasise once again that the duty of care that is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The prison authorities must act in a proactive way to prevent violence by inmates against other inmates. In 2008 and 2013<sup>33</sup> the Committee raised its concerns about the problem of inter-prisoner violence and recommended that the Montenegrin authorities invest more efforts in tackling and eradicating inter-prisoner violence and intimidation. Despite the adoption by the Directorate for the Execution of Criminal Sanctions (ZIKS) of a strategy on inter-prisoner violence, in 2017 such violence remains an issue that has not been adequately addressed.

**The CPT calls upon the Montenegrin authorities to implement the strategy for countering inter-prisoner violence; this should include investing in the recruitment of more staff, the training of staff in the use of dynamic security and de-escalation techniques (see paragraph 68), as well as implementing all other measures required to tackle and eradicate inter-prisoner violence (see paragraphs 48 and 51 on the necessity to provide more purposeful activities to prisoners).**

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<sup>33</sup> CPT/Inf (2010) 3, paragraph, 50; CPT/Inf (2014) 16, paragraphs 42 to 43.

### 3. Conditions of detention and regime

#### a. Institution for Sentenced Prisoners (KPD)

45. The overall layout of the KPD remains essentially the same as described in the CPT's 2013 visit report.<sup>34</sup> The prison accommodation remained spread over five pavilions (A, B, C, D, F). Two sections were designated for women and juveniles, as well as a semi-open unit. Further, a new unit for juveniles was scheduled to open in early 2018. **The CPT wishes to receive information about the layout and operating capacity of this unit and the date when it started functioning.**

The CPT notes positively that since its previous 2013 visit some refurbishment work had been undertaken in Pavilions A, D, F and, most recently, in C and the discipline unit. The visiting rooms for families and kitchen had also been renovated.

46. As was the case in 2013, overcrowding and a lack of personal living space for inmates remained problematic in most of pavilions, notably in Pavilions A, F and C. In Pavilion C, cells held 8 prisoners in some 25m<sup>2</sup>, providing only 3m<sup>2</sup> of living space per inmate, and in some cases even less.<sup>35</sup> This situation is of particular concern given the recommendations and immediate observation made in the CPT's 2013 report on the overcrowded situation at the KPD and the urgent need for the authorities to provide a minimum standard of 4m<sup>2</sup> of living space per prisoner in multiple-occupancy cells.<sup>36</sup>

The CPT wishes to underline that it has frequently encountered situations of prison overcrowding. The consequences of overcrowding have been highlighted repeatedly by the CPT in its visit reports and refer in particular to cramped and unhygienic accommodation; constant lack of privacy; reduced out of cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. The CPT considers that the question of minimum living space per inmate is intrinsically linked to the commitment of every Council of Europe member state to respect the dignity of persons sent to prison.

**The CPT once again calls on the Montenegrin authorities to take swift and concrete measures to meet at the very least the minimum standard of 4 m<sup>2</sup> of living space per prisoner in a multiple-occupancy cell.**

47. On a positive note, the delegation found that the material conditions had improved in most pavilions and the state of repair, hygiene, ventilation and heating in cells and access to natural light appeared generally adequate. The 11-cell detention unit for female inmates offered good conditions of detention: cells were spacious, well lit and in a good state of repair and hygiene. However, the state of the conditions in Pavilion A, notably, dirty and torn mattresses, the unhygienic state of the toilets and the lack of provision of basic hygiene materials for inmates without financial means were of concern.

**The CPT recommends that the Montenegrin authorities swiftly rectify the above-mentioned deficiencies in Pavilion A.**

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<sup>34</sup> CPT/Inf (2014) 16, paragraphs 44 to 45.

<sup>35</sup> A cell in Pavillion F measuring approximately 8m<sup>2</sup> accommodated three disabled inmates at the time of the CPT's visit.

<sup>36</sup> Living space per prisoner in prison establishments: CPT standards, CPT/Inf (2015) 44.

48. As regards activities, the delegation noted positively that there remained an open-door regime within the units from 7 a.m. until 7 p.m. Further, prisoners were offered outdoor exercise of two hours per day in the various yards in the grounds of the prison. There was also a basketball court and a gym and some pavilions had small libraries.

However, many inmates complained of having too little to occupy their time. There were few purposeful activities organised for the inmates and the majority of inmates did not have the structure afforded by regular work: only 30% of the inmates placed in the closed section of the KPD had access to a remunerated activity or work, in one of workshops (including wood-work, metal-work, textile and a car repair facility) or in cleaning and maintenance work and distribution of food. The near total lack of access to purposeful activities was of particular concern for juvenile inmates (see paragraph 57) and for the long-sentenced, high security prisoners, who spent virtually 22 hours per day locked up. Equally, these prisoners lacked regular socio-psychological support or sentence planning, to help them cope with the gravity of their crimes and structure their sentence.

49. The regime situation had in fact deteriorated since the 2013 visit,<sup>37</sup> and remains of serious concern to the Committee. Purposeful activities are of crucial importance for the well-being of any prisoner; as regards more specifically sentenced prisoners, they are essential to render meaningful a term of imprisonment. Ensuring that sentenced prisoners are engaged in purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association) is not only an essential part of rehabilitation and re-socialisation, but it also contributes to the establishment of a more secure environment within prisons.

**The CPT calls upon the Montenegrin authorities to increase their efforts to offer constructive and purposeful activities to all sentenced prisoners in the closed section of the KPD and, in particular, to provide more work opportunities.**

**The CPT also recommends that the Montenegrin authorities provide long sentenced prisoners with a regime tailored to their needs and help them reduce the level of risk they pose, to minimise the damage that long or life sentences necessarily cause and to keep them in touch with the outside world.**

b. Remand Prison

50. Material conditions at the Remand Prison have improved since 2013; cells have been repainted, the health-care unit has been refurbished, exercise yards have been reconfigured to create three extra exercise yards, perimeter infrastructural works were undertaken and a library established. .

That said, several cells and the sanitary facilities already displayed signs of wear and tear on the walls (splinters, graffiti, un-plastered areas). The cell furniture was inadequate (i.e. there were no chairs and inmates often sat on plastic buckets or ate on their beds) and in-cell toilets were only partially screened. Moreover, the artificial lighting in some of the cells was not functioning.

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<sup>37</sup> CPT/Inf (2014) 16, paragraphs 48 to 49.

Moreover, living conditions in many cells were still afflicted by overcrowding, with, for example, ten prisoners sharing 28m<sup>2</sup> of living space including the space taken up by the sanitary annexe. Indeed, it was quite common for inmates in multiple-occupancy cells to be afforded 3m<sup>2</sup> or even less per inmate.

The delegation also received several complaints concerning the rule that only one shower per week was allowed. Further, inmates complained about the lack of supply of basic hygiene products for cleaning the cells and for the inmates' personal dignity, especially for those inmates without financial means, which prompted a reliance on other inmates. Some inmates interviewed did not even have a spare set of clothes and relied on other prisoners to help them. This situation could easily contribute to the development of informal hierarchies and the potential for intimidation or bullying (see also paragraph 44).

These shortcomings were exacerbated by the fact that inmates on remand were systematically spending 23 hours each day locked in their cells, and for some inmates suspected of certain crimes this could continue for up to two years.

**The CPT calls upon the Montenegrin authorities to ensure that all remand prisoners are afforded a minimum of 4m<sup>2</sup> of living space, excluding the area taken up by in-cell sanitary annexes. The sanitary annexes should be fully partitioned (i.e. up to the ceiling).**

**Further, inmates should be regularly provided with cleaning products for the maintenance of their cells and basic hygiene products such as soap and toilet paper. Indigent inmates should also be provided with appropriate clothes. In addition, all detained persons should be offered at least two showers per week.**

51. As was the case in 2013, the only regular out-of-cell activity on offer was outdoor exercise for (theoretically) two hours per day, taken in one of the multiple courtyards, some of which were furnished with basic exercise equipment. The courtyards had been re-configured to enable each inmate to be offered two hours of outdoor exercise every day. However, for various reasons, including understaffing, access was for only one hour per day in practice. For the rest of the time, prisoners remained in a state of inactivity in their cells, their only form of distraction being board games, reading newspapers and watching TV.

The CPT stresses once again that it is unacceptable to inflict systematically, for months (and even years) on end, an impoverished regime of the kind described above on remand prisoners, persons who should benefit from the presumption of innocence. In its 26<sup>th</sup> General Report published in April 2017, the CPT addresses the issue of remand detention in detail.<sup>38</sup> The aim should be to ensure that remand prisoners are able to spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activity of a varied nature (work, preferably with vocational value, education, sport, recreation/association). The longer the period of remand detention, the more varied the regime should be. The time has come for the Montenegrin authorities to fundamentally review the way in which remand prisoners are held.

**The CPT calls upon the Montenegrin authorities to devise and implement a comprehensive regime of out-of-cell activities for remand prisoners. Further, they should ensure that all prisoners, without exception, are offered in practice at least two hours of outdoor exercise a day, in accordance with the national legislation.**

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<sup>38</sup> See the 26<sup>th</sup> General Report of the CPT: CPT/Inf (2017)5, paragraphs 52 to 73.

c. Bijelo Polje Prison

52. The establishment has not changed significantly since the CPT's 2008 visit,<sup>39</sup> and remained old and dilapidated, displaying serious structural shortcomings such as poor access to natural light in cells. The non-renovated cells in the remand Section were particularly poor. On a positive note, a new director had been appointed several months prior to the visit, and she was clearly committed to trying to keep the establishment in a good state of hygiene and ensuring its proper maintenance.

Some renovations had been undertaken to improve the conditions of the health-care centre, in seven cells of the sentenced Section were repainted and equipped with new furniture the communal toilets and showers were entirely renovated and a new ventilation system installed. Toilets were located outside the cells in the sentenced Section, but prisoners had ready access to these both day and night. The kitchen area was well maintained and inspected regularly by the municipality hygiene department, and no prisoners complained about the quality of the food.

At the time of the 2018 visit, overcrowding and lack of space remained problematic in particular as regards the 15 cells of the sentenced Section. While some of these multiple-occupancy cells afforded 4 to 5m<sup>2</sup> of living space per inmate, Cells No.3 and 4 afforded a mere 3m<sup>2</sup> per inmate, and in one case (Cell 2) 2.2m<sup>2</sup>.per prisoner. .

In sum, despite the efforts of the prison management, the establishment was not offering adequate conditions of detention especially for the sentenced population and in the CPT's opinion any increase in the prison population would aggravate the existing situation. The decision of the Montenegrin Government to replace this establishment through the construction of a new prison is to be welcomed (see paragraph 37).

Pending the construction of a new prison facility, **the CPT recommends that the Montenegrin authorities renovate the cells of the Remand Section. Further, the Montenegrin authorities should take steps to ensure that every prisoner is afforded at least 4m<sup>2</sup> of living space in multiple-occupancy cells. The official capacity of the establishment should be revised accordingly. The CPT would also like to receive information on the timetable for the construction of the new prison.**

53. As regards activities, it is encouraging that sentenced prisoners still benefit from an open-door regime during the day. Also, it was positive to note that gardening work was offered to some inmates, and that the produce was used in the kitchen. However, only 28% of the sentenced prisoners (and none of the remand prisoners) had work. Other than gardening, there were very few work opportunities or other meaningful activities on offer. Other than two hours of outdoor exercise per day and a gym, the majority of the inmates had too little to do to occupy their time. While some improvements had been made in this respect since 2008, the vast majority of inmates still lacked regular access to purposeful activities. Moreover, remand prisoners should, as far as possible, also be offered work, as well as other structured activities (see also paragraph 51).

**The CPT calls upon the Montenegrin authorities to provide inmates at Bijelo Polje Prison with access to a range of work and other purposeful activities.**

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<sup>39</sup> CPT/Inf (2010) 3, paragraph 59.

d. juveniles and young adults

54. Following a process of reform of the juvenile justice system in Montenegro, the new Law on the Treatment of Juveniles in Criminal Proceedings was adopted in 2011 (LTJCP).<sup>40</sup> Under the new law juveniles under the age of 14 years old cannot be subject to criminal proceedings. Juveniles, 14 and over but not yet 16, are considered under the law as “younger juveniles” (*mlađi maloljetnik*), and those 16 and over but not yet 18 are considered as “older juveniles” (*stariji maloljetnik*). Further, the law also covers to an extent “young adults”, i.e. persons aged 18 and over but not yet 21 years of age.<sup>41</sup> In terms of criminal sanctions, a younger juvenile may be subject only to correctional measures, while an older juvenile may be subject to correctional measures or, exceptionally, juvenile detention. The law now affords a range of safeguards to juveniles and young adults during the investigation, sentencing and sanction enforcement periods.

Measures of *correctional facility care* are imposed on juveniles by the court for specific periods and must be reviewed by the court every six months. Three types of institution are involved: (i) referral to a special education facility (*upućivanje u specijalizovanu ustanovu*) for medical treatment and rehabilitation for a period up to three years. This measure is for juvenile offenders with a “mental disability or mental condition”;<sup>42</sup> (ii) referral to a community-based correctional facility (*upućivanje u vaspitnu ustanovu nezavodskog tipa*)(see Section [x], ‘*social welfare establishments*’); and (iii) referral to a correctional home (*upućivanje u ustanovu zavodskog tipa*) for a period from six months to three years for “a juvenile who needs, in addition to being distanced from their immediate environment, the application of the measure of direct supervision and specially designed education programmes”. However, it appears that there were still no institutions or facilities corresponding to correctional homes in Montenegro, so that the measure is carried out in the juvenile section of the Spuž Prison Complex (Section F of the KPD), which also accommodates juveniles sentenced to juvenile prison.

An older juvenile may be given a sentence of *juvenile detention* pursuant to a criminal offence.<sup>43</sup> The sentence is served in “a special organisational unit for juveniles” of the administration authority responsible for criminal sanction enforcement where juveniles may remain up to the age of 23, at the KPD.<sup>44</sup>

55. At the time of the 2017 visit, ten juveniles and young adults were being held in Pavilion F of the KPD (the youngest being 17 years old), five were being held pursuant to a criminal sentence and five on compulsory correctional measures.

The layout of the section had not changed substantially since 2013 and the conditions were generally adequate. However, the section was not separated from the adults, and the juveniles had contact with adult male inmates of Pavilion F. Moreover, in their cells, juveniles were accommodated with young adults up to the age of 23 years old. Further, the delegation observed that custodial staff paid little attention to the juveniles.

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<sup>40</sup> *Zakon o postupanju prema maloljetnicima u krivičnom postupku, Sluzbeni list Crne Gore, broj 64/2011.* Formerly, the treatment of juveniles in criminal proceedings had been governed by specific provisions of the Criminal Code and Criminal Procedure Code, which still apply to matters not covered by the new law.

<sup>41</sup> Article 3 of the LTJCP.

<sup>42</sup> Article 28 of the LTJCP.

<sup>43</sup> Article 32 of the LTJCP.

<sup>44</sup> Exceptionally juveniles might remain in a special organisational unit until the age of 25 pending the accomplishment of an activity of an educational or vocational nature, pursuant to Article 33, paragraph 3 of the LTJCP.

56. It is the Committee's view that juveniles (whether on remand or sentenced) should as a rule not be held in institutions for adults but in facilities specially designed for this age group. The CPT considers that when, exceptionally, they are held in prisons for adults, juveniles should always be accommodated separately from adults, in a distinct unit. Further, adult prisoners should not have access to this unit.

Special attention should also be paid to the allocation of juveniles belonging to different age groups in order to accommodate their needs in the best way. Appropriate measures should also be taken to ensure adequate separation between these age groups in order to prevent unwanted influence, domination and abuse. The CPT considers that a case-by-case assessment should be carried out in order to decide whether it is appropriate for a particular young adult inmate to be transferred to an adult institution after reaching the age of majority (i.e. 18 years), taking into consideration the remaining term of his/her sentence, his/her maturity, his/her influence on other juveniles, and other relevant factors.

Equally, in principle, juveniles on special correctional measures should not be held together with those held on criminal grounds.

**The CPT recommends that these above-mentioned principles be taken into account when the juvenile inmates are transferred to the new Juvenile Prison building at the end of 2017. It requests confirmation of the move and the measures taken to ensure implementation of the safeguards afforded in the Law on the Treatment of Juveniles in Criminal Proceedings within 3 months.**

57. As regards regime, according to the law, juveniles subject to criminal sanctions of all kinds (custodial and non-custodial) must be treated in a manner that suits their age, level of maturity and other personal characteristics. Further, juveniles must be given the chance to acquire primary and secondary education and vocational training.<sup>45</sup>

Equally, juveniles in a correctional facility and in juvenile detention must have an individual treatment programme which must define: the possibility of involvement in education and training, leisure time use and management and co-operation with the legal guardian and other members of the juvenile's family, as well as other forms of psychosocial, pedagogical and penological impacts on the juvenile.<sup>46</sup>

The individual treatment plan in a *correctional facility* should focus on education, personal and social development, vocational training and rehabilitation, and the juvenile should be assigned to a relevant educational group (of not more than eight juveniles) according to age, mental development and other personal characteristics.<sup>47</sup> Juveniles in *juvenile detention* are entitled to: education, vocational training and qualifying for professions which suit their competence, talents and their previous work and school experience. Persons working with juveniles must have specialised teaching skills and knowledge of psychology and penology.<sup>48</sup>

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<sup>45</sup> Article 116 of the LTJCP.

<sup>46</sup> Article 121 of the LTJCP.

<sup>47</sup> Article 160 of the LTJCP.

<sup>48</sup> Article 169 of the LTJCP.

In terms of activities, during the 2017 visit the delegation observed that juveniles were offered access to outdoor exercise twice a day for several hours at a time, some of whom were engaged in remunerated work activities (maintenance and the carpentry workshops) together with male convicted prisoners. However, the regime and activities on offer remained far from meeting the requirements of the law.<sup>49</sup> Further, while some education was on offer this was extremely limited and rarely did a teacher visit the prison to help a juvenile prepare for exams. **The CPT calls upon the Montenegrin authorities to develop a full programme of education and purposeful activities tailored for juvenile inmates and their specific needs, in accordance with the legislation in force.**

In addition, according to the law, juveniles either undergoing a correctional measure in a correctional home or the juvenile detention sanction pursuant to a criminal offence should have individual treatment plans tailored to their needs including sections on education, personal and social development, vocational training and rehabilitation. The delegation noted that such plans did not exist. **The CPT recommends that detained juveniles should be given individual treatment plans tailored to their needs as required by domestic law.**

58. Overall, while there has been significant reform of the juvenile justice system, the CPT considers that not all the institutions provided for by the law have been set up, nor do conditions for juveniles inmates in detention appear to have kept pace with the law, particularly as regards purposeful activities.

**The CPT recommends that the principles governing the safeguards for juveniles held under special correctional measures be adequately implemented in accordance with the Law on the Treatment of Juveniles in Criminal Proceedings. It requests information be sent to it on the measures taken to ensure implementation and oversight of the safeguards established in national law.**

#### **4. Health-care services**

59. The policy trend in Europe has favoured prison health-care services being placed either to a great extent, or entirely, under Ministry of Health responsibility. In principle, the CPT supports this trend. In particular, it is convinced that a greater participation of Health Ministries in this area (including as regards recruitment of health-care staff, their in-service training, evaluation of clinical practice, certification and inspection) will help to achieve high-quality health care for prisoners, as well as implementation of the general principle of the equivalence of health care in prison with that in the wider community.<sup>50</sup> As such, **the CPT invites the Montenegrin authorities to consider this possibility and asks to be provided with information concerning any plans to transfer responsibility for health-care provision in prisons to the Ministry of Health.**

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<sup>49</sup> For example, Articles 169 and 171 of the LTJCP.

<sup>50</sup> At the outset of the visit the CPT's delegation was informed that all the prison health-care centres had been certified by the Ministry of Health in the course of 2016 and now fulfilled the requirements for the provision of primary and secondary health-care to inmates in terms of somatic and dental care.

60. The Health-Care Centre, located on the third floor of the Remand Prison, remained responsible for the health-care requirements of the inmate population of the *Spuž Prison Complex*. For financial and operational reasons, previously-announced plans to construct a new Special Prison Hospital, including an inpatient facility for psychiatric care, as the main health-care facility for inmates at the national level have still not materialised, despite the authorities' reference to ongoing negotiations for funding this project. **The CPT reiterates its request that it be provided with concrete information on the status of the Special Prison Hospital project and the timeframe envisaged for its establishment (see also paragraphs 37 and 88).**

61. The number of personnel of the Health-Care Centre has been increased since 2013 and comprised the Head Doctor (a General Practitioner (GP)) and three full-time GPs.<sup>51</sup> There was a continuous nursing presence<sup>52</sup> provided by a Head Nurse and 12 nurses (working on 12-hour shifts). Also present was a full-time internal specialist, radiologist and two part-time psychiatrists<sup>53</sup> and a full-time dentist, as well as two pharmacist technicians, one laboratory technician and one dental technician. In addition, specialists, including an urologist, a rehabilitation specialist and a physiotherapist regularly visited the prison. The CPT notes positively that the recommendations made in 2013 in this regard have been implemented.

As regards *Bijelo Polje Prison*, the establishment has a contract with a doctor (employed at the local hospital) who visits the prison every week-day for three hours per day and is also on call in case of need. Two nurses also work at the prison on shifts all week (from 7a.m. to 3p.m. and from 3p.m. to 10p.m.) and on weekends. A part-time psychiatrist visits the prison once per week and is also on call. Inmates in need of other specialist or dental care are taken to the local hospital.

62. The premises of the Health-Care Centre at the *Spuž Prison Complex* included two consultation rooms at the Remand Prison and four consultation rooms in the KPD. The level of hygiene was adequate and remained substantially the same as in 2013. The pharmacies were kept in an orderly manner and were adequately furnished. Some new equipment had been purchased including a defibrillator, laryngoscopes and electrocardiographs. However, other equipment was old, including the X-ray machine and the staff were awaiting a new ultrasound machine. The availability of medication appeared generally sufficient.

In light of the plans for building a new Special Prison Hospital, including an inpatient facility for psychiatric care, as the main health-care facility for inmates, **the CPT trusts that the authorities will invest in providing the necessary equipment for the adequate provision of health-care services to prisoners.**

At *Bijelo Polje Prison*, the delegation noted that the health-care centre had been recently refurbished and was spacious, equipped with the necessary equipment (including a defibrillator, aspirator, laryngoscope, inhalator, glucometer, electrocardiographs, stethoscope, blood pressure machine and thermometer). The availability of medication appeared generally sufficient. Nevertheless, the centre was situated on the first floor with steep steps leading up to it, making it inaccessible to any inmate or staff suffering from a mobility limitation or a disability.

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<sup>51</sup> Who worked from Monday until Friday from 07.00-21.00, on Saturdays between 07.00-15.00 and on Sundays if needed.

<sup>52</sup> There were always two nurses on duty in any given time.

<sup>53</sup> One of whom also acts as a narcologist.

**The CPT recommends that either a lift or ramp be installed or the health-care centre of Bijelo Polje Prison be moved to the ground floor.**

63. Medical screening of newly-arrived prisoners is mandatory and should be performed immediately upon their admission. An Instruction of the Ministry of Justice, adopted in June 2017, introduced a new protocol for the conduct of a medical examination upon admission of all inmates which requires, *inter alia* the compilation of body charts in the medical notes. That said, the Instruction does not make reference to the possibility of offering systematic screening for transmissible diseases (such as HIV and hepatitis) to newly-admitted prisoners.

At *Bijelo Polje*, the procedure involved an examination by the doctor and a chest x-ray and blood examination, if needed. There were no complaints from detained persons about the quality of the health-care or delayed medical examinations. Medical examinations upon admission appeared to be carried out systematically and promptly. However, at *Spuž Prison Complex Health-Care Centre* the delegation found that, despite the new Instruction, medical examinations upon admission were of a superficial and cursory nature.

The CPT reiterates that medical screening of newly-arrived prisoners is essential, in particular to prevent the spread of transmissible diseases, detect inmates who may constitute a suicide risk and ensure the recording in good time of any injuries.

**The CPT recommends that urgent steps be taken to put in place a thorough and comprehensive medical assessment of all prisoners newly-admitted to the Spuž Prison Complex. Such a medical assessment should also include the systematic screening for transmissible diseases (such as HIV and hepatitis).**

64. The role played by prison health-care services in the prevention of ill-treatment by the police, through the systematic recording of injuries borne by newly-arrived prisoners, and, when appropriate, the provision of information to the relevant authorities, has long been considered to be of crucial importance by the CPT.

At the *Spuž Prison Complex*, there is a register of traumatic injuries, which is an improvement since the previous visit. However, the description of injuries both in the register and in the personal medical files of inmates was superficial and the body charts introduced pursuant to the 2017 Instruction were too small to be of much use. At *Bijelo Polje* Prison, there was also a register of injuries and the descriptions were also rather cursory. However, the delegation did note that injuries borne by newly-arrived prisoners were being recorded during initial medical examinations.

**The CPT reiterates its recommendation that every newly-admitted prisoner be properly interviewed and physically examined by a medical doctor upon admission. Further, the CPT recommends that recording of the medical examination in cases of traumatic injuries be made on a special form provided for this purpose such as a body chart of an adequate size for noting injuries. Further, it would be desirable for photographs to be taken of the injuries, and for the photographs to be placed in the prisoner's medical file.**

65. The confidentiality of medical records at all of the prison establishments visited appeared generally to be well respected. However on the basis of the information received, the delegation gained the distinct impression that the confidentiality of medical consultations was not always observed and that, at least in Bijelo Polje Prison, custodial staff were occasionally present during medical examinations.

**The Committee recommends that steps be taken to ensure that medical examinations of prisoners are conducted out of the hearing and – unless the medical staff member concerned expressly requests otherwise in a given case – out of the sight of non-medical staff.**

66. As regards psychiatric care, the major challenge faced by staff is their inability to offer any hospitalisation to those patients suffering from a psychiatric disorder. The only psychiatric hospital that would accept forensic patients was located in Kotor and was generally too overcrowded to readily accept new patients (see section C below). The impact of the lack of possibility to hospitalise patients could be seen in the excessive resort to fixation, including of patients suffering from psychiatric illnesses (see paragraph 71). Further the CPT's delegation observed that there was an apparent overuse of benzodiazepines at the *Spuž Prison Complex* where 200 inmates were prescribed benzodiazepines (20% of all inmates) compared to five in *Bijelo Polje Prison* (5% of all inmates).

**The CPT refers to its recommendations set out in paragraph 72 of this report and calls upon the Montenegrin authorities to take swift and concrete measures to ensure that all prisoners suffering from a psychiatric disorder are offered adequate care and if necessary hospitalised. The CPT would like to receive information on the envisaged timeframe for putting in place such a policy within three months. Further, reference is made to the recommendation in paragraph 100 on the necessity to better regulate the prescription of benzodiazepines in prison establishments in accordance with the guidelines of the Agency for Medicines and Medical Devices of Montenegro (CALIMS).**

67. As regards prisoners with drug addiction, the *Spuž Prison Complex* and *Bijelo Polje Health Care Centres* provided substitution therapy to inmates (in 2017, five at *Bijelo Polje* and 81<sup>54</sup> at *Podgorica*), but was only offered to those inmates who had previously been prescribed therapy prior to admission. The treatment was supervised by a psychiatrist, recorded on a dedicated register<sup>55</sup> and kept in a separate safe cupboard and distributed by nurses.

The delegation also noted that there were no additional therapeutic activities arranged for inmates suffering from drug addiction, for example, the establishment of drug-free units, harm reduction tools such as a syringe and needle exchange, distribution of condoms, etc. Overall, there was a lack of a multi-disciplinary strategy to decrease the supply of and demand for drugs.

**The CPT recommends that the above precepts be addressed by the Montenegrin authorities and substitution therapy be provided to all inmates in need, rather than only to those who had previously been prescribed therapy before admission. Such an approach would be consistent with that already being followed in the community at large.**

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<sup>54</sup> 71 prisoners on buprenorphine and 10 on methadone.

<sup>55</sup> As provided for by the June 2017 Ministry of Justice Instruction on the Health-Care Protection of Remand and Sentenced Prisoners.

## 5. Other issues of relevance to the CPT's mandate

### a. prison staff

68. The ratio of staff to prisoners was adequate at Bijelo Polje Prison, where 45 custody officers were supervising a population of 91 inmates. However, the KPD had a staffing complement of only 178 custody officers to supervise 642 inmates and at the Remand Prison 83 custody officers<sup>56</sup> were responsible for 327 prisoners.

Further, the deployment shifts of prison officers meant that in some areas of the KPD, for instance Pavilion B, there was only one prison officer for 120 inmates. Similarly, at the Remand Prison at the time of the delegation's visit, on the second floor there was only one prison officer for 92 inmates and, on the third floor, one prison officer for 44 inmates. Such staffing levels are totally inadequate and place at risk the safety and security of both prisoners and staff.

On a positive note, the custody officers were now working 12-hour shifts, which represents an improvement from the previous 24-hour shifts in place in 2013.

Too few prison officers on duty can lead to negative outcomes for the inmates (and staff) and can directly impact on safety levels within the prison. The lack of staff resources can lead to staff being unable to react quickly to incidents of inter-prisoner violence, or being unable to use dynamic security techniques to manage challenging inmates. Instead this can often lead to an over-reliance on use of means of restraint and isolation to deal with issues that could have been resolved without the use of force, were there more staff. This was evident in the KPD and the Remand Prison (see paragraphs 70 and 73).

**The CPT recommends that the number of custodial staff employed at the KPD and the Remand Prison be increased and their deployment reviewed, in the light of the above remarks.**

69. The CPT's delegation observed that some prison officers at the KPD and the Remand Prison were openly carrying truncheons and pepper spray in detention areas. The open display of truncheons and pepper spray is not conducive to developing positive relations between staff and inmates and **the CPT recommends that custodial staff at the KPD and the Remand Prison stop carrying truncheons and pepper spray in detention areas.**

Further, it was noted that prison officers were not wearing any form of identification on their uniforms, which is essential for reasons of accountability, should an incident arise. **The CPT recommends that all staff who have direct contact with inmates should systematically wear a means of identification.**

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<sup>56</sup> In addition, the Remand Prison had 26 officers assigned to the Escorting Section.

b. means of restraint

70. Means of restraint could be applied in the prison establishments visited, in order to control over-agitated and violent inmates and to prevent the escalation of any incidents, as well as to prevent acts of self-harm pursuant to the relevant provisions of the Law on the Enforcement of Sentences of Imprisonment, Fines and Security Measures (LESI) of .<sup>57</sup> At the outset of the visit the CPT's delegation was informed that the ZIKS had adopted new guidelines concerning the measure of mechanical fixation of an inmate. The guidelines provided a number of safeguards including that the measure should only be ordered by a general practitioner in consultation with a psychiatrist, as a last resort (i.e. after exhausting alternative means to achieve the desired outcome) and for the shortest time possible and that there should be medical check-ups of the inmate subjected to fixation every two hours.

Registers in both the Remand Prison and the KPD indicated that recourse was made to the mechanical fixation of an inmate to a bed pursuant to Article 166 of the LESI on a number of occasions. Such a measure was generally enforced in disciplinary cells and consisted in practice of fixating an inmate, face up, to a bed using fabric belts attached to the arms, ankles and torso, or with metal ankle- and hand-cuffs and even ankle chains (see paragraph 41).

At the *Remand Prison*, in the first 9 months of 2017, seven mechanical fixations of inmates had been applied and the same measure was resorted to 16 times in the course of 2016. All 23 fixations had been decided upon and carried out by prison officers in the light of self-harming and/or aggressive behaviour by the detained persons and executed in one of the cells equipped with CCTV.

At the *KPD*, in the first nine months of 2017, 15 fixations had been applied, all of them at the request of prison officers. In 2016, 11 fixations had been ordered and in 2015, 15 fixations, in the latter year all had been applied upon the orders of prison officers. The reasons varied and around half were to prevent self-harm or harm to others and the remainder were for reasons of inmate disobedience, indecent or rude behaviour or passive resistance to staff orders.

In terms of duration, according to the information gathered in 2016 and 2017, inmates at the Remand Prison and the KPD were frequently fixated for periods of several days, sometimes lasting up to a week, and in two cases, the measure had lasted for 13 and 14 days respectively.

In principle, the only regular monitoring of the measure was through CCTV performed by security staff. A member of the health-care staff would visit the inmate after a few hours and the psychiatrist would either be consulted by telephone (and not directly see the inmate) or would visit the detained person physically only when present in the establishment (on a weekly basis). In some cases, the fixation was upon a prison officer's orders, without the authorisation of a doctor. In others, the psychiatrist gave blank authorisations for the fixation of the inmate according to the need ("*fiiksacija po potrebi*") ('PRN restraint') and recommended the prolongation of the measure "in accordance with the circumstances" in writing or over the telephone. The psychiatrist also decided on the release after several days, including in some cases over the telephone. Inmates were temporarily released in order to eat and comply with the needs of nature, or in some cases had one hand released in order to eat their meals.

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<sup>57</sup> See in particular Articles 155-171 of the LESI. Among the security measures provided for by the law are: physical force, fixation, separation, truncheons, water cannons, specially trained dogs, chemical means and firearms.

71. In 2013, the CPT underlined its deep concerns about the application of mechanical restraint for periods of days at a time and stressed that this cannot have any justification and amounts to ill-treatment.

The use of fixation was over-relied upon by staff, lasted for excessively long periods and was not in compliance with the national guidelines regulating its use.

Several aspects about the practice of using fixation at the *KPD* and the Remand Prison are deeply problematic. These include the prolonged duration of the fixation, the method of fixation (i.e. inmates were being tied down to a metal bed which was not fixed to the floor at the Remand Prison), the use of metal hand and leg cuffs, the lack of regular checks by medical staff and adequate health-care supervision but instead of the reliance on CCTV, the fact that it is often prison officers who decide on its execution (and not doctors), and the problematic role of the psychiatrist who appeared to be giving blank authorisations (sometimes over the phone) for the fixation of the inmate according to need. Further, at times fixation appeared to be used as a punishment and/or to compensate for shortages of trained staff.

As in 2013, the delegation still found that inmates whose mental state required hospitalisation could be mechanically restrained for days in a disciplinary cell; many of the cases of prolonged fixation of detained persons were patients who had been later transferred to Dobrota Psychiatric Hospital.

In the CPT's opinion, the application of mechanical restraint in such situations and for periods of days at a time cannot have any justification and could be considered as amounting to ill-treatment. Indeed, the situation had not significantly improved since 2013 and its recommendations put forward in its report on the 2013 visit have still not been implemented

72. The CPT recognizes that in every prison system there are certain inmates who pose a serious danger to themselves and/or to others and in respect of whom it is necessary on occasion to resort to means of restraint in a prison setting.. However, in the Committee's opinion the approach to fixation in prisons should take into consideration various principles and minimum standards, which it elaborated upon in its previous visit report.<sup>58</sup> The recent adoption of national guidelines to regulate the use of fixation certainly represent an initial attempt by the Montenegrin authorities to tackle this important issue., However, these are clearly not adhered to in practice at the *KPD* and the *Remand Prison*.

In view of the above situation and in light of the fact that prolonged periods of fixation can amount to inhuman and degrading treatment, the delegation made an immediate observation under Article 8, paragraph 5, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It requested that immediate action be taken to ensure that:

- fixation of an agitated inmate to prevent self-harm or suicide should only take place in a medical setting and only upon the orders of a general practitioner and/or a psychiatrist, who evaluates the patient directly;
- fixation should never be used for disciplinary or regime purposes and the measure should comply with the relevant Montenegrin legal provisions;
- fixation should only be used for the shortest possible time in order to prevent the risk of harm to the individual or others and only as a last resort, and when all other reasonable options fail, and should be subject to continuous direct supervision.

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<sup>58</sup> CPT/Inf (2014) 16, paragraph 75.

By letter received on 23 January 2018, the Montenegrin authorities informed the CPT that a full-time psychiatrist had been recruited at the Spuž Prison Complex in order to ensure a better supervision of the execution of the measure of fixation of inmates at the KPD and Remand Prison. While welcoming such an appointment to reinforce the provision of mental health input, the Committee considers that such a response does not address the concerns outlined in its immediate observations under Article 8, paragraph 5, of the Convention.

**Therefore, the CPT calls upon the Montenegrin authorities to end the current practice of fixation of inmates in prisons, until this can take place in conformity with the above principles accompanied by the provision of appropriate training to staff. To this end, the CPT requests to be provided with an update on the concrete measures taken by the authorities regarding this matter within 3 months. It also wishes to receive confirmation, within 3 months, that metal hand and ankle-cuffs and chains are no longer used to fixate an inmate.**

c. discipline

73. Notable improvements since 2013 are evident in the amended legislation,<sup>59</sup> which includes regulation of disciplinary procedures in prisons.

The most severe disciplinary sanction envisaged by Montenegrin law is placement in a disciplinary cell for a maximum of 14 days.<sup>60</sup> The CPT's delegation was able to observe that the recourse to disciplinary sanctions was not excessive in any of the prison establishments visited.

At the *KPD*, 267 disciplinary proceedings were initiated from January to October 2017 and 412 in the course of 2016 ; the measure of solitary confinement was often conferred for the full 14-day period.

At the Remand Prison there were 79 disciplinary proceedings initiated in the first nine months of 2017 and 160 during 2016 . Periods of solitary confinement as a disciplinary sanction were frequent and normally lasted up to 10 days.

At *Bijelo Polje Prison*, there were 12 disciplinary proceedings from January until October 2017 and 18 in 2016, and the measure of solitary confinement, when imposed, lasted on average four days, with one case of 14 days.

That said, the delegation noted that, in practice, disciplinary sanctions of or exceeding 14 days, in a couple of cases, could be accumulated and served consecutively, resulting in cases where prisoners spent up to one month in disciplinary solitary confinement.

**The CPT recommends that, if a prisoner has been sanctioned to disciplinary confinement for a total of more than 14 days in relation to two or more offences, there should be an interruption of several days in the disciplinary confinement at the 14-day stage.**

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<sup>59</sup> See the revised Law on Enforcement of Sentence of Imprisonment, Fines and Security Measures (June 2015), Official Gazette of the Republic of Montenegro 36/2015 LESI (Articles 102 to 119) compared to the Articles 55 to 60 of the previous Law on the Execution of Criminal Sanctions of 2011 .

<sup>60</sup> Pursuant to Article 108 of the LESI.

74. The new law provides inmates with a range of safeguards governing the disciplinary procedure, including to be provided with information in writing of the disciplinary charges against them, to be assisted by a lawyer and to appeal against any sanction and the timeframes in which the safeguards should operate.<sup>61</sup>

A Disciplinary Committee has been set up at the *KPD* and the Remand Prison for adjudication hearings. Moreover, sanctions of solitary confinement were being executed several weeks and even months after the event.

The CPT believes that prison disciplinary proceedings are, by their very nature, summary proceedings. Their function is to respond as quickly as possible, consistent with the need to give adequate notice of hearings and charges to be faced, after the alleged offence has been discovered. The sooner the punishment is imposed the more likely it is to be effective. Waiting for weeks – or sometimes months – to hold the hearing and impose any penalty renders the procedure ineffective. Justice requires that a sanction for a disciplinary offence be adjudicated upon and executed as soon as possible, not months later. Where a prisoner is to be charged with a disciplinary offence, the charge should be brought as soon as possible. **The CPT recommends that the Montenegrin authorities take the above principles into account and make the necessary changes to the disciplinary procedure.**

75. As was the case in 2013, at both the *Remand Prison* and the *KPD*, a doctor was still required to certify that an inmate could be placed in solitary confinement as a disciplinary sanction.<sup>62</sup> Further, at the Remand Prison, inmates serving a measure of disciplinary solitary confinement told the delegation that they did not receive regular visits from a medical doctor. The delegation also noted that at both prison establishments, health-care staff were involved in routine security procedures (urine testing of inmates). It is the CPT's long-held view that a prison doctor acts as a patient's personal doctor. Consequently, in the interests of safeguarding the doctor/patient relationship, **the CPT recommends that prison health-care staff should not be asked to certify that a prisoner is fit to undergo punishment. Nor should he/she carry out examinations, including urine testing for security purposes requested by an authority.**

The CPT reiterates its view that medical practitioners in prisons act as the personal doctors of prisoners and ensuring that there is a positive doctor/patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. As the CPT has repeatedly stressed, the practice of prison doctors certifying that a prisoner is fit to undergo solitary confinement as a punishment is not conducive to promoting that relationship.<sup>63</sup> On the other hand, health-care staff should be very attentive to the situation of prisoners placed under solitary confinement and should visit such prisoners on a regular basis, at least once a day, and provide them with prompt medical assistance and treatment as required.<sup>64</sup>

**The CPT recommends that the Montenegrin authorities issue clear guidelines about the role of prison doctors in relation to disciplinary matters, in the light of the above remarks.**

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<sup>61</sup> Articles 102 to 119 of the LESI.

<sup>62</sup> CPT/Inf (2014) 16, paragraph 61.

<sup>63</sup> See for example the CPT's 21<sup>st</sup> General Report, CPT/Inf (2011) 28, paragraphs 62 and 63.

<sup>64</sup> The legislation provides that the prison doctor and the head of shift should pay a daily visit to any prisoner placed in solitary confinement for disciplinary purposes.

76. The eight disciplinary cells located in a separate dedicated unit at the KPD as well as the three cells in use for the solitary confinement of inmates on the ground floor of the Remand Prison had been refurbished since the 2013 periodic visit. The disciplinary unit at *Bijelo Polje Prison*, consisting of two cells, appeared generally adequate and does not call for any particular comment.

77. There are various provisions in the domestic law regulating the discipline of juveniles in detention. Juveniles in juvenile detention may be subject to disciplinary measures in the form of a warning or revocation of privileges or by means of “separation into a separate room” (*izdvajanje u posebnu prostoriju*) for up to seven days, or exceptionally 15 days where the juvenile has already been subject to a disciplinary measure.<sup>65</sup> In practice, the delegation noted a recent sanction of separation involved seclusion for three days at the KPD.

The CPT wishes to stress that any form of isolation may have a considerably detrimental effect on the physical and/or mental well-being of juveniles. In this regard, the Committee observes an increasing trend at the international level to promote the abolition of solitary confinement as a disciplinary sanction in respect of juveniles. Particular reference should be made to the United Nations Standard Minimum Rules on the Treatment of Prisoners (“Nelson Mandela Rules”) which have recently been revised by a unanimous resolution of the General Assembly and which explicitly stipulate in Rule 45 (1) that solitary confinement shall not be imposed on juveniles. The CPT fully endorses this approach. **The CPT considers that the current national legislation concerning separation involving cellular confinement of up to seven or exceptionally 15 days as a disciplinary punishment for juveniles should be amended and brought in line with the above precepts.**

d. contact with the outside world

78. The visit entitlements for prisoners and detained persons had not changed substantially since the CPT’s previous visit and generally inmates were allowed visits of 30-60 minutes per week depending on which prison establishment they were held in. Further, sentenced prisoners retain the right of a monthly intimate unsupervised visit lasting three hours in suitable premises.<sup>66</sup>

As regards remand prisoners, whether adults or juveniles, they were permitted a weekly visit of 30 minutes, subject to the authorisation of the competent judge, the standard remained closed booth-type visits.

At all three prison establishments visited there was the possibility of open visits and physical contact with children in specially equipped premises (which had been recently renovated at the KPD and Remand Prison).

At the *KPD*, sentenced prisoners could make a 10-minute telephone call at their own expense on a daily basis, in dedicated telephone booths.<sup>67</sup> However at *Bijelo Polje Prison*, only one telephone call per week was allowed. Remand prisoners could access the telephone for 30 minutes per week upon judicial authorisation only.

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<sup>65</sup> Article 175, LTJCP.

<sup>66</sup> Pursuant to Article 74 of the LESI.

<sup>67</sup> Pursuant to Article 67 of the Rulebook on House Rules of the Directorate for the Execution of Criminal Sanctions.

79. The CPT stresses its serious concerns about the restrictions governing contact with the outside world, especially for those remand inmates in the *Remand Prison* in Podgorica and *Bijelo Polje Prison*. Contact currently depends on the courts' authorisation, rather than it being a right for such inmates: this is a relic of the past. The CPT reiterates that contact with the outside world should not be curtailed unless there are particular reasons for the purposes of the investigation, and even then it should not be totally denied.

The CPT recognises that on occasion it may be necessary, in the interests of justice, to impose certain restrictions on visits for particular remand prisoners. However, any such restrictions should be strictly limited to the requirements of a given case and be applied for as short a time as possible and for a specified period of time. The CPT recalls that, according to the European Prison Rules, remand prisoners shall be allowed to communicate with family and other persons in the same way as convicted prisoners – “unless there is a specific prohibition for a specified period by a judicial authority” (Rule 99). In the interest of safeguarding their relationships with family and friends, the CPT considers that all categories of prisoners should be entitled to the equivalent of at least one hour of visiting time per week (i.e. four hours per month). Preferably, prisoners should be able to receive at least one visit every week. **The CPT recommends that the relevant legislation be amended accordingly and that remand prisoners should be allowed to communicate with family and other persons in the same way as convicted prisoners, unless there is a specific prohibition for a specified period imposed by a judicial authority.**

Moreover, the Committee also considers that all prisoners should be able to receive visits from their family members under reasonably open conditions; the use of screened visits should be the exception, not the rule, and based exclusively on a security concern of an appreciable nature. **The CPT recommends that the Montenegrin authorities review the visiting arrangements at the Remand Prison, in the light of the above remarks.**

e. complaints and inspection procedures

80. The complaints' system has remained unchanged since 2013 and inmates may complain internally to the Director of ZIKS<sup>68</sup> and externally to the Ombudsman. The delegation observed that boxes for addressing complaints to the Ombudsman had been placed in all sections of the KPD as well as at the Remand Prison. The Ombudsman told the delegation that complaints were collected on a regular basis by his staff and processed according to their subject matter. The management of the KPD informed the delegation that they had only received one complaint about alleged staff ill-treatment over the previous two years, which had been passed on to ZIKS and the Ombudsman. At Bijelo Polje Prison, the number of complaints filed by inmates was low in view of the fact that the prison director was holding periodic meetings with each prisoner individually and they were addressing their complaints and requests to her directly and she kept a detailed account of these in writing.

81. Prison establishments nationwide are subject to inspection by the NPM and by civil society bodies (in this respect, see paragraph 31).

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<sup>68</sup> Pursuant to Article 12 of the LESI.

f. transport of detainees

82. The CPT's delegation paid a visit to the escorting unit of the Spuž Prison Complex in order to assess the condition of vehicles used for the transport of detainees. With the exception of one recently acquired minivan, the rest of the inspected vehicles did not comply with the minimum safety requirements for protecting prisoners, there was a lack of safety belts and an absence of artificial lighting in the compartments for detainees.

**The CPT recommends that the Montenegrin authorities proceed with the progressive replacement of the old-generation minivans for the transport of prisoners. In the meantime, steps should be taken to ensure that all vehicles are equipped with safety belts and are sufficiently lit.**

## C. Psychiatric establishments

### 1. Preliminary remarks

83. In the course of the 2017 visit, the CPT's delegation carried out a follow-up visit to *Dobrota Special Psychiatric Hospital* to examine the implementation by the Montenegrin authorities of recommendations arising out of the CPT's visits to the establishment in 2004, 2008 and 2013. The CPT also visited, for the first time, the *Psychiatric Clinic of the Clinical Centre of Montenegro* (hereafter "Podgorica Psychiatric Clinic" or "Psychiatric Clinic"), to examine living conditions of patients and the use of means of restraint.

84. *Dobrota Special Psychiatric Hospital* remains the only institution in Montenegro to accommodate civil involuntary patients, as well as the majority of those patients hospitalised by court order in the context of criminal proceedings. At the time of the visit the hospital, with a capacity of 241, was accommodating 246 patients (202 male and 44 female), including: 4 civil involuntary patients;<sup>69</sup> 56 patients placed in the hospital by the court under a security measure of "compulsory psychiatric treatment and placement in a health-care institution";<sup>70</sup> ten persons placed under a security measure of compulsory treatment for drug or alcohol addiction;<sup>71</sup> four persons in remand detention who had been placed by the court for purposes of observation and assessment;<sup>72</sup> three sentenced prisoners who had developed a mental disorder during their incarceration and been sent to the hospital for treatment.<sup>73</sup> The rest of the patients were hospitalised on a voluntary basis.

85. The hospital's "forensic" ward had a total capacity of 21, so that the majority of patients placed by court order in the context of criminal proceedings were accommodated on other wards.<sup>74</sup> Further, in the light of the fact that both the forensic and the addictions wards accommodated only male patients, female patients subject to a court order for compulsory treatment for addictions or compulsory psychiatric treatment had necessarily to be accommodated on other wards. Various plans for the construction of a separate forensic psychiatric facility in Montenegro had not progressed by the time of the visit.<sup>75</sup>

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<sup>69</sup> Since the beginning of 2017 there had been a total of 38 involuntary placements. The numbers of involuntary placements have decreased considerably since 2013, when there had been over 300 cases to approximately 260 in 2014 and 100 in 2015.

<sup>70</sup> Pursuant to Article 69 of the Criminal Code.

<sup>71</sup> Pursuant to Articles 71 and 72 of the Criminal Code.

<sup>72</sup> Pursuant to Article 153(2) of the Criminal Procedure Code

<sup>73</sup> Pursuant to Article 32 of the Law on the Protection and Exercise of the Rights of Mentally Ill Persons.

<sup>74</sup> It should be noted that persons may also be placed in *Dobrota Special Psychiatric Hospital* under a security measure of compulsory psychiatric treatment or compulsory treatment for addictions, pursuant to Article 42 of the Law on Misdemeanours.

<sup>75</sup> See CPT/Inf (2014) 16, paragraph 92 and CPT/Inf (2010) 3, paragraph 90.

86. The CPT notes that little or no progress has been made on another longstanding problem at Dobrota Special Psychiatric Hospital, relating to the presence of large numbers of patients who no longer require hospitalisation, but who remain in the establishment for lack of adequate structures or facilities in the community, the so-called “social patients”. One such patient had been in the hospital since 1966. Such patients, many of whom were elderly, represented over 40 per cent of the total number of patients accommodated at the hospital at the time of the visit.<sup>76</sup> The CPT notes in this connection that the Montenegrin government’s Action Plan for the Improvement of Mental Health in Montenegro for 2017-2018 refers specifically to reducing the number of “long-stay patients” in Dobrota Special Psychiatric Hospital within the context of a larger programme for deinstitutionalising persons with mental disorders.<sup>77</sup>

87. The CPT noted the lack of progress in respect of the serious problems at Dobrota Special Psychiatric Hospital notably the chronic overcrowding in all its wards due and the presence of a number of “social patients” who no longer requiring hospitalisation. As a consequence, patients had to share beds and certain other patients were granted extended release in the community against clinical indications (see also paragraphs 88 and 93) In the light of its findings, the CPT’s delegation made an immediate observation under Article 8, paragraph 5, of the Convention requesting that action be taken to provide every patient with a bed, to stop the practice of releasing patients into the community against clinical indications and to cease accommodating forensic patients together with other patients on the different wards.

88. By letter of 23 January 2018, the Montenegrin authorities informed the CPT that a feasibility study had been completed in December 2017 for the construction of a special forensic psychiatric hospital within the Spuž Prison Complex. To this end, the Ministry of Justice had included in the 2018 budget funding for the establishment of a building plan, with a view to commencing construction in 2019. Financing for the construction itself would be provided from EU funds or from the State Budget.

Regarding the chronic overcrowding at Dobrota Special Psychiatric Hospital, and more particularly the presence of large numbers of “social patients” no longer requiring hospitalisation, the Montenegrin authorities informed the Committee in the same letter that the Ministry of Health, at a meeting on 15 December 2017, took a decision to establish a special Commission to review this situation and make a proposal for a solution.

**In the light of the above information, the CPT calls upon the Montenegrin authorities to find a swift and effective resolution to the above-mentioned issues and it requests:**

- **to be updated on the construction of the forensic psychiatric hospital foreseen by the feasibility study completed in December 2017; and**
- **to be informed of the concrete steps envisaged to resolve the problem of “social patients” no longer requiring hospitalisation in Dobrota Special Psychiatric Hospital, including clarification of the broader situation regarding plans for the deinstitutionalisation of persons with mental disorders in line with the government’s Action Plan for the Improvement of Mental Health in Montenegro for 2017-2018.**

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<sup>76</sup> There were 107 “social patients” at the time of the CPT’s visit, accommodated on the Hospital’s chronic wards.

<sup>77</sup> *Akcioni plan za unapređenje mentalnog zdravlja u Crnoj Gori 2017 – 2018*, see goal 3 under the Plan, which is available on the website of the Ministry of Health.

89. The Clinical Centre of Montenegro in Podgorica is the country's main hospital complex, serving as a reference and university hospital, with over 30 separate facilities and more than 1400 health care staff. The Centre's *Psychiatric Clinic*, composed of departments for psychosis, neurosis, and drug addiction, as well as a day hospital, has a total capacity of 40 beds. At the time of the visit it was accommodating 24 patients all of whom had been admitted on a voluntary basis, according to the information provided by the staff.

## **2. Ill-treatment**

90. In the course of the visit, the CPT's delegation observed that relations between staff and patients at *Dobrota Special Psychiatric Hospital* were generally calm and respectful, with many of the staff clearly committed to the patients' well-being.

The majority of patients interviewed indicated that they had been correctly treated by staff. However, the delegation received a few allegations of verbal and physical ill-treatment of patients by staff. One such allegation related to an incident of alleged verbal abuse of a patient by a staff member in 2015, which resulted in the resignation of the staff member concerned.

Another more recent incident involved allegations that six patients on male chronic ward 2 had been subjected to kicks and blows by a senior member of the nursing staff during an incident in early March 2016. The CPT's delegation was informed that soon after the allegations were brought to the attention of the hospital management, the staff member in question was transferred to duties outside of the ward where the incident allegedly took place. Further, the CPT's delegation found that the internal investigation carried out in respect of this incident was cursory and inadequate and, moreover, the allegations had not been communicated immediately to the relevant prosecuting authority. By letter of 23 January 2018 the Montenegrin authorities informed the Committee that the staff member in question was dismissed in late 2017. In addition, the Hospital's management has, since the CPT's visit, drawn up a "Protocol on procedures in cases of torture and other forms of cruel, inhuman or degrading treatment or punishment of patients".<sup>78</sup>

**The CPT reiterates its recommendation that the management of Dobrota Special Psychiatric Hospital regularly remind staff that all forms of ill-treatment of patients are unacceptable and will be subject to appropriate sanctions.**

**To this end the CPT also recommends that the management ensure that all such allegations are reported promptly to a competent external authority, in this case the relevant prosecutor, and that they are the subject at the internal level of an independent, in-depth and properly documented investigation. In addition, the CPT recommends that staff members who are the subject of allegations of physical ill-treatment of patients be immediately suspended from duties involving direct contact with patients. The Committee would also like to receive a copy of the Protocol.**

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<sup>78</sup> *Protokol o postupanjima u slučajevima torture i ostalih oblika surovog, nehumanog ili degradirajućeg tretmana odnosno kažnjavanja pacijenata.*

91. Following the CPT's visit, the Ombudsman issued an advisory opinion concerning this case, having initiated his own investigation *ex officio* in October 2017.<sup>79</sup> The Ombudsman concluded that the patients in question had been ill-treated by a member of the senior nursing staff in March 2016. The Ombudsman also severely criticised the director of the hospital for not reporting the allegations to the relevant prosecutorial authorities and highlighted the lack of clarity surrounding the actions taken in respect of the staff member in question. The Ombudsman's opinion was addressed *inter alia* to the Kotor District Prosecutor, and the CPT understands that the Prosecutor's office has commenced investigations into this case. **The CPT would like to be informed of the results of the Prosecutor's investigations.**

92. Inter-patient violence did not appear to be a major problem. According to the information gathered by the CPT's delegation, when incidents did occur, they were managed effectively by staff.

### **3. Patients' living conditions**

93. The chronic overcrowding observed at Dobrota Special Psychiatric Hospital resulted in patients regularly having to sleep on mattresses on the floor in the corridors, or being released on "extended weekends" in the community,<sup>80</sup> despite clinical indications that some of these patients were not yet sufficiently recovered or prepared. The CPT recalls that these issues, which were also raised in its immediate observation in respect of the Hospital (see paragraph 8), are a direct result of the fundamental problems referred to in paragraphs 86 to 88, which require urgent resolution. In the meantime, **the CPT calls upon the Montenegrin authorities to ensure that every patient is provided with his/her own bed and that patients are released on leave or discharged when clinically appropriate. The CPT would like to receive confirmation within three months of the concrete steps taken by the Montenegrin authorities to resolve these issues.**

94. The CPT's delegation noted that some structural improvements had been made to the hospital's premises such as the installation of central heating. In addition, two new buildings had been constructed, one as a training centre and another, not yet opened, for outpatient treatment; the training centre had been used in the past for activities with patients, but this was no longer the case. **The Committee would like to receive information on the current use of these two buildings.**

95. Conditions in the chronic (male and female) and acute (male and female) wards were poor. In the chronic wards patients were accommodated in dilapidated rooms, some of which were overcrowded and provided insufficient living space, e.g. nine beds in 18 m<sup>2</sup>, and the sanitary facilities, especially in the male chronic wards were unhygienic and badly in need of repair. In addition, there were insufficient cupboards and lockers for the numbers of patients accommodated.

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<sup>79</sup> Opinion of the Montenegrin Ombudsman (*Mišljenje*) No. 01- 631/17 – 18, 5 December 2017, available at [http://www.ombudsman.co.me/docs/1512995002\\_05122017-preporuka-ko.pdf](http://www.ombudsman.co.me/docs/1512995002_05122017-preporuka-ko.pdf)

<sup>80</sup> By way of example, on 6 October 2017, on the forensic ward there were 26 patients for 21 beds (five on leave); on the addictions ward (ward "Five") there were 22 patients for 21 beds (one on leave); on the chronic male wards (wards "Two", "Six" and "Eight") there were 105 patients for 97 beds (eight patients on leave); on the acute male ward (ward "Seven") there were 38 patients for 32 beds (six on leave).

In their letter of 23 January 2018, the Montenegrin authorities informed the CPT of plans to reconstruct Chronic Wards No. two and six. **The CPT would like to be informed of the completion of these works.**

Similarly, sanitary facilities in the male acute ward were in a poor state of repair and in need of renovation, and the common room, which served as both dining room and day room, was inadequate in both size and furnishings.

96. As regards the forensic ward, it was positive that patients now had access to a lockable space for their personal belongings. That said, the environment in the forensic ward remained distinctly carceral, with external barred doors on the rooms and a lack of decoration in rooms as well as in common areas. Moreover, all patients' rooms on the forensic ward were equipped with CCTV. **In the CPT's view, in order to preserve a minimum of privacy, CCTV equipment should not be used in rooms for ordinary accommodation.**

97. **The CPT recommends that the Montenegrin authorities undertake the renovations necessary to provide an adequate level of hygiene and an appropriate living environment for patients in all wards of the hospital; within the framework of such renovations care should be taken to ensure that no more than four patients are accommodated in any one room, and that all patients have access to a lockable space for their personal belongings.**

98. Living conditions for patients at *Podgorica Psychiatric Clinic* were evidently poor. The premises, which had been built in the 1940s, were generally dilapidated, especially the sanitary facilities; this, coupled with the lack of decoration, resulted in an atmosphere which was depressing for both staff and patients. Patients slept in rooms with up to seven beds, which did not provide adequate living space or furniture. For example, one room with seven beds measured only 27 m<sup>2</sup>; another with five beds measured less than 20 m<sup>2</sup>. Rooms were sparsely furnished and patients had no lockable space in which to keep personal belongings.

On a more positive note, rooms provided sufficient natural light and artificial lighting and were well ventilated, bedding was clean, and patients had unrestricted access to the external grounds of the hospital. According to the information received by the CPT's delegation, there were plans for the construction of a new building to house the Psychiatric Clinic.

**The CPT would like to be informed of the timetable for the construction of a new building to house the Podgorica Psychiatric Clinic. In this connection, the CPT recommends that the Montenegrin authorities ensure that patients' rooms in any new facilities have no more than four beds.**

**In the meantime, the Committee recommends that the Montenegrin authorities take steps as a matter of urgency to improve conditions for patients, including by renovating patients' rooms, and improving the state of the sanitary facilities.**

#### 4. Treatment

99. As noted also during past visits to *Dobrota Special Psychiatric Hospital*,<sup>81</sup> there was still an evident lack of structured therapeutic and rehabilitative activities for patients and the treatment consisted essentially of pharmacotherapy. Medical files were well kept on the whole.

100. The CPT's delegation noted that, in principle, the supply of basic medication at the hospital was adequate. However, the majority of the drugs used were older-generation neuroleptics which have many undesirable side-effects, with only one new-generation anti-psychotic generally available. **The CPT encourages the Montenegrin authorities to strive to provide an adequate supply and range of new-generation antipsychotic medications for patients in Dobrota Special Psychiatric Hospital and in other psychiatric establishments in the country.**

101. A number of patients on the acute wards had been prescribed benzodiazepines over relatively long periods. It is recognised that prolonged use of benzodiazepines can give rise to serious problems, including drug dependence as well as the possibility of adverse effects on cognitive function, physical health, and mental health. The relevant guidelines of the Agency for Medicines and Medical Devices of Montenegro (CALIMS) provide that the maximum duration of prescription of the most common types of benzodiazepines should not exceed a period of 8 to 12 weeks (including the time period for withdrawal).<sup>82</sup>

**The CPT recommends that the prolonged use of benzodiazepines in the treatment of patients at Dobrota Special Psychiatric Hospital be reviewed in accordance with the relevant above-mentioned guidelines of the Agency for Medicines and Medical Devices of Montenegro (CALIMS) (see also paragraph 66) and that increased efforts be made to ensure that all patients have access to a wider variety of treatment options, involving a range of psycho-social rehabilitative activities, in line with the recommendation at paragraph 103.**

102. The CPT's delegation was concerned to note that there was no systematic monitoring of the white blood cell count of patients treated with Clozapine, which can have as a side-effect a potentially lethal reduction of white blood cells (granulocytopenia). Therefore, **the Committee recommends that the Montenegrin authorities take urgent steps to ensure that a protocol on the mandatory monitoring system of the white blood cell count of patients treated with Clozapine be drawn up at the national level. Further health-care staff should be alert to the early signs of the potentially lethal side effects of Clozapine.**

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<sup>81</sup> See CPT/Inf (2014) 16, paragraph 95, CPT/Inf (2010) 3, paragraphs 92 and 93, and CPT/Inf (2006) 18, paragraph 314.

<sup>82</sup> See for example: [https://www.calims.me/Portal/faces/registarHumani?\\_afzLoop=6063554002105743&\\_adf.ctrl-state=5inckjlq6\\_243](https://www.calims.me/Portal/faces/registarHumani?_afzLoop=6063554002105743&_adf.ctrl-state=5inckjlq6_243)

103. Patients met regularly with a psychiatrist; however, as a result of insufficient staffing levels, (see paragraph 105), and of a lack of facilities, few patients were involved in any kind of therapeutic or rehabilitative activities. Some 50 patients participated in occupational therapy; however, the room set aside for activities (knitting, painting, crafts, creative writing, etc.) could accommodate only ten persons at a time and was open from 9a.m. to 12 noon. In their letter of 23 January 2018, the Montenegrin authorities informed the CPT of plans to enlarge and upgrade the occupational therapy facilities. **The CPT would like to be informed of the completion of these works.**

In addition, there was a small library where patients could read and borrow books. Patients had access to outdoor exercise, and to the gymnasium for two to three hours during the morning; however, the possibilities for outdoor sports activities were very limited, and patients from the closed wards<sup>83</sup> were in any case only allowed outside with the approval of a doctor and accompanied by a member of staff. Very few activities of any kind were organised for bedridden patients.

In the light of this situation, it is perhaps not surprising that not all patients had individual treatment plans. As the CPT has emphasised ever since its first visit to Montenegro in 2004, psychiatric treatment should involve a treatment plan for each patient composed of both pharmacotherapy and a wide range of rehabilitative and therapeutic activities.

**The CPT calls upon the Montenegrin authorities to ensure that individual treatment plans for each patient are drawn up; such plans should be drawn up with input from the patients themselves and should include a psycho-social rehabilitative component.**

**The CPT also recommends that greater efforts be made to increase the offer of therapeutic and rehabilitative activities (e.g. occupational therapy, individual and group psychotherapy, education, sports) and involve more patients in activities adapted to their needs; this also implies the recruitment of more staff (see also paragraph 107).**

104. According to the information provided to the CPT's delegation, from the beginning of 2014 to the end of September 2017, 55 patients had died at the hospital, including one suicide in February 2016.<sup>84</sup> Only five of these deaths (which did not include the suicide) had been the subject of an autopsy and the CPT's delegation was told that in general autopsies were only carried out where the cause of death was unknown; there was no policy of systematically carrying out an autopsy in the event of the death of an involuntary patient.<sup>85</sup> In any case, even where an autopsy was carried out, the autopsy report was not placed on the patient's file.

**In the CPT's view, just as is the case with other closed institutions, when an involuntary patient in a psychiatric hospital dies, an autopsy should follow unless a medical authority independent of the hospital decides that an autopsy is unnecessary.<sup>86</sup>**

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<sup>83</sup> Besides the forensic ward, the male and female acute wards were closed, as was part of the addictions ward and chronic ward "Eight".

<sup>84</sup> Ten deaths in 2014; 15 in 2015; 17 in 2016 and 13 since the beginning of 2017.

<sup>85</sup> Health-care institutions are obliged to carry out autopsies in the cases set out in Article 164 of the Law on Health Care (Official Gazette 003/16, 039/16, 002/17), but the Law contains no provisions to the effect that autopsies must be carried out on involuntary patients unless an independent authority decides otherwise.

<sup>86</sup> See also Recommendation Rec(99) 3 of the Committee of Ministers of the Council of Europe to member states on the harmonisation of medico-legal autopsy rules.

**The Committee recommends that this approach be adopted and rigorously applied in Dobrota Special Psychiatric Hospital. More generally, the CPT recommends that the Montenegrin authorities institute a practice of carrying out a thorough inquiry into every death of a psychiatric patient, in particular with a view to ascertaining whether there are lessons to be learned as regards operating procedures.**

## **5. Staff**

105. At the time of the visit, there were 10 psychiatrists and 79 nurses, which represents a decrease since the 2013 visit.<sup>87</sup> In addition, eight interns undergoing a specialisation in psychiatry worked with the patients, and an internal medicine specialist and a dentist also visited the hospital once a week.

Nurses worked 12-hour shifts, and on all wards except the forensic (see paragraph 107) and chronic wards, two nurses were present at all times, and in addition, a head nurse was also present from 8 a.m. to 3 p.m. On the chronic wards, there was only one nurse present around the clock, who could be responsible for up to 46 patients, with in addition the head nurse present from 8 a.m. to 3 p.m. During afternoon and night shifts, as well as on weekends and holidays, there was only one psychiatrist on duty for the whole hospital. According to the observations of the CPT's delegation, the insufficient staff numbers represented a real security risk on closed wards, where even the most disturbed patients could circulate freely within the ward with virtually no supervision by hospital staff. Indeed, such staffing conditions can generate not only excessive overtime, but also highly stressful conditions leading to "burn out" of staff members, as well as disproportionate reactions of staff towards challenging patients.

106. Moreover, the low numbers of staff qualified to provide psycho-social rehabilitative activities were an obvious and significant hindrance to the establishment of a truly multidisciplinary approach based on individual treatment plans. The staffing complement included a single social pedagogue, two defectologists, and no occupational therapists at all. In addition, there were still only three social workers on staff. On a more positive note, the number of psychologists had increased from three to five (two of whom were clinical psychologists).

107. The Montenegrin authorities indicated to the CPT's delegation that, in line with the National Strategy for the Improvement of Mental Health in Montenegro and its most recent Action Plan 2017-2018, it was planned *inter alia* to increase the number of psychiatrist positions in the hospital to 16 and the number of nurse positions to 108. Furthermore, an increase in the number of social workers to five and the establishment of five occupational therapist positions were also among the improvements foreseen.

**The CPT calls upon the Montenegrin authorities to take immediate measures to improve staffing levels at Dobrota Special Psychiatric Hospital in the light of the above observations, and would like to be informed of the status of the implementation of the Action Plan for the Improvement of Mental Health in Montenegro 2017-2018 in this regard.**

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<sup>87</sup> See CPT/Inf (2014) 16, paragraph 98.

108. On the forensic ward, there was one nurse on duty at all times, and in addition, the head nurse was also present between 7 a.m. and 3 p.m. The head doctor of the ward was present from 7 a.m. to 3 p.m.

In addition, security staff from a private security company were still being employed inside the forensic unit:<sup>88</sup> two security staff were present between 10 a.m. and 10 p.m. and one security guard was on the ward during the night. From the information gathered by the CPT's delegation, it did not appear that the security staff received any specific training for dealing with psychiatric patients and yet at times they intervened and even were involved in the application of means of restraint. The CPT considers that the presence of security guards inside the forensic unit is not conducive to the establishment of a therapeutic environment, and that the role of security staff should be limited in principle to ensuring perimeter security. Further, staff assigned to security-related tasks in a psychiatric hospital should be carefully selected and receive appropriate training before taking up their duties, as well as in-service training, and any interactions with patients should be subject to the authority of, and closely supervised by, qualified health-care staff.

In their letter of 23 January 2018, the Montenegrin authorities informed the CPT that a July 2016 Rulebook on the internal organisation of the Hospital provided for presence of three nurses on each shift on the forensic ward as well as for the removal of the security guards from inside the ward. **The CPT recommends that the Montenegrin authorities take immediate steps to increase the nursing presence on the forensic ward in accordance with the Rulebook. Further, pending the removal of the security guards from inside the ward, their role, training and supervision should be reviewed in the light of the above remarks.**

## 6. Means of restraint

109. Patients at *Dobrota Special Psychiatric Hospital* could be secluded or subjected to mechanical restraint using canvas belts (five-point), as well as chemical restraint (often in conjunction with mechanical restraint).<sup>89</sup> The hospital had established a protocol for the use of mechanical restraint, a copy of which was available in the nursing stations. There were separate central registers for both mechanical restraint and chemical restraint, which were also recorded in nurses' registers at the ward level and in the patient's medical file. However, the records were not always accurately kept, notably as concerns the recording of the time of the end of the measure.

110. There was no dedicated space or register for the seclusion of patients; however, patients were sometimes placed in seclusion in their own room or in the rooms for mechanical restraint for periods up to several hours.

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<sup>88</sup> See CPT/Inf (2014) 16, paragraphs 99 and 100, and CPT/Inf (2010) 3, paragraph 88.

<sup>89</sup> The use of means of restraint in respect of persons with mental disorders is governed by Articles 42 to 47 of the Law on the Protection and Exercise of the Rights of Mentally Ill Persons.

111. The CPT notes that, pursuant to Article 43 of the LPRMI, a measure of restraint may be used only as a last resort, “for a duration of several minutes up to several hours”. At Dobrota Special Psychiatric Hospital, 38 instances of resort to mechanical restraint had been recorded between 23 May 2016 and 1 October 2017, for periods generally not exceeding four hours; however, the CPT’s delegation identified several cases where patients had been repeatedly subjected to mechanical restraint over one to two days, with only short intervals of one to two hours in between: by way of example, in one case, over a period of two days, a patient had been restrained six times for periods ranging from 50 minutes to three hours forty minutes and amounting to a total duration of 13 hours. **The CPT would like to receive information from the management of Dobrota Special Psychiatric Hospital on the extent to which measures are taken to review treatment and/or involve another doctor in cases involving such repeated use of mechanical restraint in respect of the same patient.**

112. Further, only the emergency/admissions ward and the male and female acute wards had dedicated rooms for applying mechanical restraint. On other wards, patients were subjected to mechanical restraint in their own beds in full view of other patients. The vital signs of patients under mechanical restraint were monitored every 30 minutes, and otherwise nurses generally observed the patients through a window in the door. Patients did not always have a debriefing with the doctor following the removal of the restraint. On the acute wards, security staff from the forensic ward could be called in to assist with applying measures of mechanical restraint.

113. The CPT considers that any use of means of restraint should adhere to the following principles:

- patients should only be restrained as a measure of last resort to prevent imminent harm to themselves or others and restraints should always be used for the shortest possible time. When the emergency situation resulting in the application of restraint ceases to exist, the patient should be released immediately;
- if, exceptionally, for compelling reasons, recourse is had to mechanical restraint or seclusion of a patient for more than a period of hours, the measure should be reviewed by a doctor at short intervals. Consideration should also be given in such cases and where there is repetitive use of means of restraint to the involvement of a second doctor;
- means of restraint should always be applied with skill and care, in order to minimise the risk of harming or causing pain to the patient and to preserve as far as possible his/her dignity. Staff should be properly trained before taking part in the practical application of means of restraint;
- patients should not be subjected to mechanical restraint in view of other patients (unless the patient explicitly expresses a wish to remain in the company of a certain fellow patient); visits by other patients should only take place with the express consent of the restrained patient;
- every patient who is subjected to mechanical restraint should be under continuous supervision, and a qualified member of staff should be permanently present in the room in order to maintain a therapeutic alliance with the patient and provide him/her with assistance;

- all instances of the use of restraint should be systematically recorded both in the specific register and in the patient's file; such records should include the name of the patient, the times at which the measure began and ended, the circumstances of the case and reasons for resorting to the measure, the name of the doctor who ordered and approved it, and an account of any injuries sustained by the patient or staff;
- once the means of restraint have been removed, it is essential that a debriefing of the patient take place, to explain the reasons behind the measure, reduce the psychological trauma of the experience and restore the doctor-patient relationship. This also provides an opportunity for the patient, together with staff, to find alternative means to maintain control over him/herself, thereby possibly preventing future eruptions of violence and subsequent restraint;
- as regards seclusion, the room in which patients are placed should be specially designed for that specific purpose. In particular, it should ensure the safety of the patient and provide a calming environment;
- if recourse is had to chemical restraint, only approved, well-established and short-acting drugs should be used. The side effects that medication may have on a particular patient need to be constantly borne in mind, particularly when medication is used in combination with mechanical restraint.

**The CPT calls upon the management at Dobrota Special Psychiatric Hospital to ensure that both the policy and the practice concerning the use of means of restraint adhere to the above principles.**

**In addition, the Committee recommends that all other principles and minimum safeguards concerning the use of means of restraint set out in the CPT's revised standards on restraint (CPT/Inf (2017) 6), and reproduced in Appendix III to this report, be applied in Dobrota Special Psychiatric Hospital and reflected in its guidelines. If necessary, legislation should be amended accordingly.<sup>90</sup>**

114. An examination of the mechanical restraint register at *Podgorica Psychiatric Clinic* revealed that patients, all of whom were considered as voluntary patients, could be subjected to mechanical restraint using leather straps or improvised cloth straps. According to the information received by the delegation, not all measures of mechanical restraint were recorded in the register (for example, restraint applied to prevent patients from disrupting intravenous tubes was not recorded). Indeed, the register contained only a handful of entries and most of these were missing vital information such as the full date, or the time when the restraint was removed. The CPT's delegation was unable, as a result, to gain a clear picture of the extent of the use of mechanical restraint in the Clinic.

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<sup>90</sup> Article 42 of the Law on the Protection and Exercise of the Rights of Mentally Ill Persons refers to "regulations set by the competent body of the public administration" regulating the use of means of restraint. According to the information received by the CPT's delegation, such regulations have yet to be adopted.

## 7. Safeguards

115. The treatment of patients with mental disorders continues to be governed by the Law on the Protection and Exercise of the Rights of Mentally Ill Persons (LPRMI),<sup>91</sup> as amended in 2013, and the Law on Non-contentious Proceedings (LNCP), as amended in 2015.<sup>92</sup> The legal framework has remained largely the same as described in the CPT's report on the 2008 visit.<sup>93</sup> Pursuant to Article 32 of the LPRMI, a "seriously mentally ill person" may be hospitalised against his/her will where, on account of a mental disorder or behavioural disorder, he/she seriously and directly threatens his/her or another's life, health or security. A juvenile may be hospitalised on the same basis, without the consent of his/her legal guardian.

A psychiatrist at the institution admitting the person must immediately examine him/her and must certify within 48 hours whether or not there exist grounds for the person to be detained against his/her will (*prisilno zadržavanje*) pending the decision of the court.<sup>94</sup> The same procedure applies where a voluntary patient withdraws his/her consent to hospitalisation. The institution must inform the competent court within 48 hours,<sup>95</sup> and the court must reach a decision on the involuntary hospitalisation of the person within eight days.<sup>96</sup> The decision may be appealed within three days by the patient and the second instance court must reach a decision within eight days from the date on which the appeal was received. The initial placement decision may be for up to thirty days, and may be extended by the court for up to three months, and thereafter for periods up to six months.<sup>97</sup>

The amended LNCP has reinforced the safeguards surrounding involuntary hospitalisation of a civil nature.<sup>98</sup> Firstly, it is now stipulated that the patient must have legal counsel, and if he/she is without means, then free legal aid must be provided; otherwise the court must appoint an *ex officio* lawyer. Secondly, the court must arrange a hearing in the psychiatric institution, during which the court must hear the patient, unless the patient is incapable of understanding the proceedings or his/her health condition precludes it. Finally, the court is now obliged to obtain the report of a psychiatric expert who is independent of the psychiatric institution. The CPT welcomes these developments.

That said, the relevant legislation still does not provide for a personal hearing of patients or their personal representatives at court proceedings concerning the review of their involuntary placement, nor is there an explicit right for the patient to request the termination of the involuntary hospitalisation.

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<sup>91</sup> Official Gazette 32/05, 27/13.

<sup>92</sup> Official Gazette 27/06, 20/15.

<sup>93</sup> See also CPT/Inf (2010) 3, paragraph 100.

<sup>94</sup> Article 34, LPRMI.

<sup>95</sup> Article 46, LNCP. The institution must also inform within 48 hours of the person's admission the patient's legal representative, the competent social welfare body and the institution's independent multidisciplinary body (Article 36, LPRMI).

<sup>96</sup> Article 44, LNCP.

<sup>97</sup> Articles 49, 51 and 53, LNCP.

<sup>98</sup> See Articles 48, 48a and 48b LNCP.

**The CPT recommends that the Montenegrin authorities ensure that all patients subject to involuntary hospitalisation in a psychiatric institution:**

- **are granted the right to be heard in person and/or through their legal representative at all court hearings prior to any decision concerning the renewal of their involuntary placement;**
- **have the right to request the termination of their hospitalisation measure and to request an opinion from an independent psychiatrist of their own choice, at public expense, if necessary;**
- **are systematically informed of the above-mentioned rights.**

116. At *Dobrota Special Psychiatric Hospital* it appeared that in general the prescribed procedure for involuntary hospitalisation was followed in practice, and that voluntary patients signed forms confirming their consent to admission, which were placed in their files. Patients also signed a separate form confirming their consent to treatment, and the CPT's delegation welcomed the fact that patients placed involuntarily in the Hospital in the context of civil proceedings had also signed forms consenting to their treatment. However, involuntary patients' files did not always include complete documentation concerning review proceedings and decisions by the court to extend involuntary hospitalisation. **This deficiency should be rectified.**

117. As regards Article 31 of the LPRMI,<sup>99</sup> the CPT is concerned that the designated court procedure does not provide the necessary safeguards to ensure that the persons concerned benefit from the right to have the lawfulness of their placement and stay decided speedily and reviewed regularly by a court and, in the context of such proceedings, that they have the opportunity to be heard in person by the judge and represented by a lawyer. **The CPT recommends that the Montenegrin authorities either abrogate Article 31 of the LPRMI or revise it in the light of the above remarks.**

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Pursuant to Article 31, the decision on hospitalisation is also taken by a court in the following cases: i) if there is a disagreement between the authorised health-care worker and the psychiatrist who receive the mentally ill person about the need for hospitalisation; ii) if the person concerned is not capable of giving consent and does not have a legal guardian; and iii) if the person is a juvenile or is legally incapacitated due to a mental health disorder and the guardian has provided consent. Prior to making a decision on placement, the court is obliged to seek a written opinion from a psychiatrist from the list of court experts (preferable one not working at the psychiatric institution in which the person has been placed). Patients placed by the court under such circumstances are considered to be "voluntary" for the purposes of all other provisions of the law, i.e. they do not benefit from the safeguards afforded patients placed involuntarily; in particular, there is no provision for a review of such placements, nor any possibility for the patient (or guardian) to appeal the court's decision.

118. Regarding forensic patients, the basic legal framework remains as described in previous reports.<sup>100</sup> Pursuant to Article 69 of the CC, a court may impose a “security measure of compulsory psychiatric treatment and placement in a health-care institution” on a person who has committed a crime and at the time was criminally irresponsible or partially criminally irresponsible, where such placement is necessary to prevent a serious danger of the person committing another serious crime. The measure is not limited in time; however, the court must examine *ex officio* every nine months the situation of the person concerned, in order to determine whether the grounds for the measure still exist. Further, pursuant to Article 138 of the Law on the Execution of Prison Sanctions, Fines and Security Measures,<sup>101</sup> the health-care institution must inform the court when necessary and at least once a year of the state of health of the person concerned. Article 32 of the LPRMI also provides for the placement in a psychiatric institution of persons who have committed a criminal offence or a misdemeanour while affected by a mental disorder, and of sentenced prisoners who have developed a mental disorder during their incarceration.

119. According to the information gathered by the CPT’s delegation, patients at *Dobrota Special Psychiatric Hospital* subject to an order for compulsory psychiatric treatment in the context of criminal proceedings were generally heard by the court and assisted by a lawyer during the initial proceedings. At review proceedings, on the other hand, it appeared that patients were often not present, and some of the patients interviewed appeared unaware of their right to request a suspension of the security measure. Further, despite previous recommendations of the CPT to this effect, there are no provisions in the law concerning the person’s right to request an independent forensic assessment in the context of appeal or review proceedings.

**The CPT reiterates its recommendation<sup>102</sup> that the Montenegrin authorities take steps to ensure that patients subject to a compulsory psychiatric treatment order in the context of criminal proceedings have the effective right to be heard in person by the judge concerned when the need to continue the compulsory treatment is reviewed. Furthermore, the right to request an independent forensic assessment in the context of placement and review proceedings should be clearly set out in the relevant legislation. Finally, patients should be effectively informed of their rights in this regard.**

120. There still appears to be no legal requirement to obtain consent to treatment from forensic psychiatric patients. Nevertheless, forensic patients on the male acute ward of *Dobrota Special Psychiatric Hospital* had signed forms consenting to their treatment. This is a welcome development.

That said, the CPT must stress once again<sup>103</sup> that the fundamental principles relating to consent to treatment also apply to persons placed in a psychiatric institution in the context of criminal proceedings. **The CPT therefore reiterates its recommendation that the Montenegrin authorities take the necessary steps to ensure that every patient is fully informed about the envisaged treatment and has the opportunity to refuse treatment or any other medical intervention.**

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<sup>100</sup> See notably CPT/Inf (2010) 3, paragraph 104 and CPT/Inf (2006) 18, paragraph 331.

<sup>101</sup> Official Gazette 036/15.

<sup>102</sup> See CPT/Inf (2014) 16, paragraph 105.

<sup>103</sup> See, for example, CPT/Inf (2014) 16, paragraph 106.

121. Regarding complaints mechanisms, as referred to in previous reports,<sup>104</sup> patients at *Dobrota Special Psychiatric Hospital* had access to complaints boxes on all the wards, and the Council for the Protection of Patients' Rights, set up as the "independent multidisciplinary body" pursuant to Article 49 of the LPRMI was responsible for examining complaints and generally overseeing the rights of patients. It is positive that according to recent changes in its statute, the members of the Council that will be appointed in 2018 will be selected through a public call process.

**The CPT would like to be informed of the formation of the new Council for the Protection of Patients' Rights at Dobrota Special Psychiatric Hospital, including details of the appointment procedure under the new system.**

In addition, pursuant to Article 31 of the Law on the Rights of Patients (LRP),<sup>105</sup> a Patients' Ombudsman<sup>106</sup> had also been appointed to deal with patients' complaints, which could be filed orally or in writing. Under the law, the Patients' Ombudsman must respond to a complaint within three days, and if the patient is not satisfied with the response, he/she may address the health inspectorate of the Ministry of Health.<sup>107</sup> Patients interviewed by the CPT's delegation were aware of the role of the Patients' Ombudsman.

122. The CPT's delegation welcomed the new format of the hospital's information brochure, which had been written with the help of NGOs and included detailed information on the legal status and rights of involuntary patients.

123. In terms of external monitoring of the conditions of patients, Dobrota Special Psychiatric had been visited at least once a year since 2014 by the NPM,<sup>108</sup> and had also been visited by different NGOs since 2011.

124. The arrangements for patients' contact with the outside world were, as in the past, satisfactory. Patients, including forensic patients, could receive unlimited family visits and be granted home leave. Further, patients were allowed to use their mobile phones and access the internet several hours a day.

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<sup>104</sup> See CPT/Inf (2014) 16, paragraph 108 of and CPT/Inf (2010) 3, paragraph 107.

<sup>105</sup> Official Gazette 40/10.

<sup>106</sup> *Zaštitnik prava pacijenata* (literally, "Protector of Patients' Rights").

<sup>107</sup> Article 32, LRP.

<sup>108</sup> See the 2014, 2015 and 2016 Annual Reports of the Montenegrin NPM.

## D. Komanski Most Institution for Persons with Special Needs

### 1. Preliminary remarks

125. The CPT's delegation carried out a follow-up visit to the Komanski Most Institution for Persons with Special Needs, in order to review progress made towards the implementation of the CPT's recommendations.<sup>109</sup> The Institution was accommodating 113 adult residents at the time of the visit (51 female and 62 male), for an official capacity of 130.

126. The legal framework applicable to social care homes has evolved since the CPT's 2013 visit with the adoption of a new Law on Social and Child Protection<sup>110</sup> in 2013, the amendment of the Family Law in 2016,<sup>111</sup> the adoption of the Law on the Prohibition of Discrimination against Persons with Disabilities in 2015<sup>112</sup> and the passing of related secondary legislation.<sup>113</sup>

The issue of the deinstitutionalisation of residents of Komanski Most Institution has been raised by the CPT since its first visit in 2008 to the establishment. The CPT notes that the new Law on Social and Child Protection makes specific reference to the "prevention of institutionalisation and availability of services in the least restrictive environment" as one of its guiding principles.<sup>114</sup> Further, the Montenegrin government in September 2016 issued its second Strategy for the Integration of Persons with Disabilities, for the period 2016-2020, along with its accompanying Action Plan 2016-2017.

The Strategy for 2016-2020 explicitly acknowledges that the lack of sufficient services for supporting adults with intellectual disabilities, who are often institutionalised for years or living in virtual isolation in the community, remains a major problem. Neither the Strategy nor the Action Plan refer specifically to deinstitutionalisation, nor are any concrete steps foreseen in either document for such a process: the Action Plan contains a single item related to this issue (item 10), which refers only to the carrying out of a feasibility study for the establishment of a support centre for community living.

127. The CPT's delegation was informed that, since 2013, only five persons had been discharged from Komanski Most Institution; of these, two were foreign nationals who were transferred to their country of origin, and another two were juveniles who were transferred to the Resource Centre for Children and Youth in Podgorica.<sup>115</sup>

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<sup>109</sup> Komanski Most Institution was visited by the CPT in 2008 and 2013 (see CPT/Inf (2014) 16, paragraphs 110 to 129 and CPT/Inf (2010) 3, paragraphs 109 to 136).

<sup>110</sup> Official Gazette 27/13 and 050/17. This law replaced the previous law which had been adopted in 2005; it has since been amended by a series of amending laws ending with 050/17.

<sup>111</sup> Official Gazette 1/07, 53/16.

<sup>112</sup> Official Gazette 35/15, 44/15.

<sup>113</sup> Such as on Services for Supported Living in the Community (*Pravilnik o bližim uslovima za pružanje i korišćenje, normativima i minimalnim standardima usluga podrške za život u zajednici*, Official Gazette 30/15).

<sup>114</sup> Article 7(7).

<sup>115</sup> The fifth person was discharged into the care of his family.

The institution's 2016 Annual Report<sup>116</sup> indicates that a Plan for the Transformation of Public Institution "Komanski Most" was adopted in 2013, within the larger framework of the reform of the social and child protection system. The Plan focuses on preventing further admissions along with the gradual deinstitutionalisation of the current residents through the fostering of skills for independent living and the provision of adequate alternative services within families and in the community. The plan also foresees the creation of two small "group houses" for six persons each, to accommodate persons with mild intellectual disabilities. The ultimate goal is to transform Komanski Most Institution into a Resource Centre alongside the parallel development of support systems in the community suitable to fulfil the needs of persons with disabilities.

However, according to the information received by the CPT's delegation, there has been little progress in creating appropriate alternative structures and facilities in the community. **The CPT would like to receive updated information concerning the steps taken by the Montenegrin authorities to implement the longstanding project for the deinstitutionalisation of social care beneficiaries. In addition, the CPT would like to be kept informed of developments in the plan for the transformation of Komanski Most Institution.**

## 2. Ill-treatment

128. The CPT's delegation noted that the general atmosphere at Komanski Most Institution was relaxed and that staff exhibited a caring attitude towards residents. No allegations were received of ill-treatment of residents by staff; however, the delegation was informed by the establishment's management of one case of physical ill-treatment of a resident by a staff member which had occurred in March 2017. At the time of the visit, the incident was under investigation by prosecutorial authorities, and the staff member in question had been suspended pending the results of the investigation. **The CPT would like to be informed of the outcome of the investigation.**

129. Inter-resident violence did not appear to be a major problem. According to the information gathered by the CPT's delegation, when incidents did occur, they were managed effectively by staff.

## 3. Residents' living conditions

130. The continuing improvements in the living conditions of residents at *Komanski Most Institution* since the CPT's first visit to the institution in 2008 are to be welcomed. At the time of the 2017 visit, male residents were accommodated on ward A, and female residents on ward B. Ward C, formerly used to accommodate juvenile residents, had been completely renovated with a view to accommodating residents suffering from autism in two six-bed dormitories. With a view to providing an appropriate therapeutic environment for autistic patients, rooms should accommodate no more than four residents. The delegation was also informed of plans to create a small crisis ward for short-term treatment. **The CPT recommends that rooms in Ward C for autistic patients at Komanski Most Institution accommodate no more than four residents and would like to be informed of the opening of Ward C and the creation of the crisis ward.**

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<sup>116</sup> *Izvyještaj o radu za 2016*, available at <http://juzkomanskimost.me/dokumenti>.

131. The CPT's delegation noted that the outdoor exercise areas were green, spacious and pleasant and that some spaces were now sheltered to enable residents to use the areas in all weather conditions. Common areas were also pleasantly decorated and well furnished.

132. Conditions in Ward B had improved significantly since the previous visit; in particular, the rooms were bright, well-furnished and pleasantly decorated. Sanitary facilities were clean and well-maintained. However, it appeared that not all residents had a lockable space in which to keep personal belongings. **The CPT recommends that all residents of Komanski Most Institution be provided with a lockable space for their personal belongings.**

133. The situation in Ward A, however, was less positive. The sanitary facilities on the ground floor were particularly dilapidated and in need of urgent repair, as were some of the walls on the same floor. In addition, residents' rooms had little decoration, and the CPT's delegation noted that some of the rooms accommodating residents with mobility problems were poorly ventilated and malodorous. The CPT's delegation was informed by the management that plans to refurbish Ward A were underway. **The CPT would like to be informed of the completion of the refurbishment works in Ward A of Komanski Most Institution.**

134. On a more positive note, a hairdresser and barber salon had been set up on the ground floor of Ward B, which was staffed by a professional hairdresser and used both by residents (from both wards) and staff. The CPT welcomes such a practice.

#### **4. Staff and care**

135. Staffing levels at *Komanski Most Institution* had been improved since the 2013 visit, with 83 staff members employed (as compared to 75 in 2013), 52 of whom worked directly with residents. These included 14 nurses and one head nurse, 15 carers, 17 occupational therapists and two occupational therapy animators, and two physiotherapists.

In addition, in view of the opening of the new Ward C for residents with autism, the management had requested from the Ministry of Labour and Social Welfare an additional three nurses and one carer.

136. The recruitment of a full-time general practitioner was ongoing. In the meantime, there was a part-time general practitioner, who worked in the institution for at least two hours a day, including weekends. In addition, other medical specialists – a neuropsychiatrist, a psychiatrist, a neurologist, a urologist, a cardiologist, a gynaecologist - also worked at the institution for at least two hours per week, and an orthopaedist was present for at least one hour a week. A dentist was also employed for at least three hours per week.

137. Nurses and carers worked 12-hour shifts (beginning at 7 a.m. or 7 p.m.), organised to ensure the presence of one nurse and one carer on each ward at any time. This is not sufficient given the number of residents on each ward and the essential role played by nurses and carers in providing an adequate level of protection, hygiene and care, particularly in the light of the fact that many of the residents are severely mentally and physically disabled.

**The CPT reiterates its recommendation that the authorities take steps to increase the number of nurses and carers at Komanski Most Institution in order to ensure an increased presence on the wards of these staff. Furthermore, efforts should be made to fill the vacant post of full-time general practitioner without delay. The Committee also reiterates its recommendation that the Montenegrin authorities explore the possibilities of providing enhanced conditions of service for staff so as to facilitate appropriate staff recruitment and retention.**

138. In terms of treatment, the level of specialist medical treatment had improved since the 2013 visit and residents regularly received consultations with the relevant specialist, usually in the institution. When necessary, emergency treatment was arranged promptly and cooperation with external health services was satisfactory. Medical files were well kept, and there was an adequate supply of medication.

That said, the CPT's delegation noted that the institution was lacking basic emergency equipment such as a defibrillator. **The CPT recommends that the management of Komanski Most Institution ensure as a matter of urgency that the institution is equipped with a defibrillator.**

139. As regards medication, the CPT's delegation was concerned to note that the vast majority of residents had been prescribed benzodiazepines over relatively long periods, and that there was no systematic monitoring of the white blood cell count of residents treated with Clozapine. **The CPT refers to its remarks and recommendation in paragraphs 101 to 103, which also apply to the situation observed at Komanski Most Institution.**

140. Residents had separate individual treatment plans for medical care (under the responsibility of the head nurse) and for rehabilitation (under the responsibility of the staff of the educative and rehabilitative services). The individual treatment plans for rehabilitation contained detailed objectives in such areas as social/legal protection, relations with family, and socialisation and were reviewed regularly at six-month intervals. The CPT welcomes these positive developments.

141. Most of the residents were involved in some kind of rehabilitative and therapeutic activities, including occupational therapy. The CPT's delegation welcomed the establishment of new therapeutic facilities. In particular, a room for sensory stimulation had been set up, which was particularly appreciated by the residents. In addition, there was a new "time-out room", used as a space for residents to relax and be in a quiet environment while accompanied by a member of staff (see also paragraph 143 on this room), and a new well-equipped physiotherapy room, located in a separate building along with the common room for occupational therapy. Around 20 residents used the physiotherapy room on a regular basis, and the physiotherapists also visited bedridden residents on both wards on a daily basis.

Besides the common occupational therapy room, there was also a dedicated room for occupational therapy on each ward. Crafts made during occupational sessions were sold at an annual Christmas fair in one of the commercial centres. Recently, residents had been involved as actors in a film made at the institution, and the residents interviewed by the CPT's delegation expressed great enthusiasm concerning their experiences of acting in the film. Outings were also regularly organised once a month to town to attend sporting events or visit a café or commercial centre.

Some sports activities were organised, more or less informally, and some of the residents had participated in the regional Paralympic competitions (and won medals). Such activities were particularly appreciated by the residents involved.

142. According to the information provided to the CPT's delegation, there were on average three to four deaths per year of residents, occurring either at Komanski Most Institution, or in an external hospital. All such deaths to date have been considered to be due to natural causes. As a consequence no autopsies have been carried out. **The CPT refers in this connection to its remarks and recommendations in paragraph 104, which also apply, *mutatis mutandis*, to Komanski Most Institution and all other closed social care institutions in Montenegro.**

## 5. Means of restraint

143. The management of Komanski Most Institution confirmed to the delegation that, as a matter of policy, mechanical restraint had not been used there since 2010 and seclusion was also no longer used.<sup>117</sup> This is positive.

The CPT's delegation was shown a "time out" room which had recently been set up in Ward B. The room, which measured 3 m by 6 m, had padded blue walls and no furniture and was, according to staff, used as a place where agitated residents were taken to calm down; in such cases, which were apparently quite rare, the door was left open and a staff member stayed with the resident in the room. The use of the room did not appear to be recorded systematically. The CPT welcomes the initiative of the management of Komanski Most Institution to introduce means other than mechanical restraint and seclusion to deal with agitated residents. As regards the time-out room, the Committee recommends that a protocol for its use be established and that all instances of use of the room be recorded in a dedicated register, as well as in the resident's file.

144. On the other hand, chemical restraint (usually in the form of an injection of a benzodiazepine<sup>118</sup> or, more rarely an anti-psychotic<sup>119</sup>) was used at Komanski Most Institution, frequently on the basis of a PRN<sup>120</sup> prescription by the neuropsychiatrist. The use of such prescriptions was registered in the resident's medical file, as well as in a special medical report. The CPT has applied the following principles in psychiatric establishments:<sup>121</sup>

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<sup>117</sup> See also CPT/Inf (2014) 16, paragraph 123.

<sup>118</sup> Diazepam.

<sup>119</sup> Haloperidol.

<sup>120</sup> "PRN" stands for *pro re nata*, Latin for "for something that occurred"; in this context: "as needed".

<sup>121</sup> See, in particular, CPT/Inf (2017) 1, paragraph 112.

The CPT must underline in this context that the administration of chemical restraint using rapid-tranquillisers requires close medical supervision and adherence to strict protocols by all staff involved, as well as the necessary skills, medication and equipment. The application of rapid tranquillisers on the basis of a PRN prescription without the explicit re-confirmation by a medical doctor might place too much responsibility on nurses as regards the assessment of the resident's mental state and the provision of an adequate response, in the absence of a medical doctor, to potential complications. It may also reduce the nursing team's motivation to attempt de-escalation of the situation by other means and consequently open the door for abuse.

In the Committee's opinion, in the event of a resident presenting a state of agitation which cannot be dealt with by the nursing staff, the resident's psychiatrist (or the duty psychiatrist) should be called immediately and intervene promptly to assess the state of the resident and issue instructions on the action to be taken.

Only in exceptional situations, when a resident's agitation cannot be controlled by nursing staff and the intervention of a psychiatrist is not possible within minutes, may the administration by nursing staff of rapid tranquillisers under a "conditional" PRN prescription be justified, meaning that a medical doctor must be contacted (e.g. by phone) and must confirm the prescription prior to its use. Further, a medical doctor must arrive without delay to monitor the resident's response and deal with any complications.

Moreover, the use of a PRN prescription for rapid tranquillisers must be accompanied by specific safeguards: as a minimum, any such PRN prescription should be drawn up by an experienced doctor after having thoroughly assessed the resident's physical status, should only be valid for a limited time (i.e. weeks rather than months) and should be re-assessed each time it is used or where there is a change in the resident's medication.

Indeed, other more general safeguards accompanying any use of means of restraint (such as the existence of a comprehensive policy on restraint, the use of restraint as a measure of last resort and the choice of the most proportionate method, as well as the recording of the event in the resident's medical file and in a central register of restraint measures and a debriefing of those involved) should also apply when rapid tranquillisers are administered on the basis of a PRN prescription.

**The CPT recommends that these precepts be effectively implemented in practice at Komanski Most Institution, and, where relevant, in other social care institutions in Montenegro.**

## 6. Safeguards

145. Despite the reform of the social and child protection system in Montenegro referred to in paragraph 126, the CPT's delegation noted that, in practice, little had changed in terms of placement procedures since the CPT's 2013 visit. The decision on placement was still taken by the relevant Social Welfare Centre (SWC), often following a formal request made by the resident's relatives or legal guardian. The placement decision was based on the assessment performed by the SWC, as was the decision for discharge. Although Montenegrin law does not expressly stipulate that deprivation of legal capacity is a prerequisite for placement in Komanski Most Institution, it appeared that as a general rule the residents had been deprived, or were in the course of being deprived, of their legal capacity. Pursuant to Article 236 of the Family Law,<sup>122</sup> the SWC is also the authority responsible for appointing a guardian for a person deprived of his/her legal capacity.

146. The CPT's delegation was informed that, as in the past, for the majority of the residents at Komanski Most Institution, the guardian was still an employee of the SWC.<sup>123</sup> The potential conflict of interest which arises when the guardian of a resident is an employee of the same body which is responsible for both the appointment of a guardian and the placement decision remains an issue of concern for the CPT.

**The Committee therefore recommends that the Montenegrin authorities review the legislation and practice surrounding the appointment of guardians for residents placed in social care institutions, with a view to avoiding such potential conflict of interest.<sup>124</sup>**

147. In addition, concerning the placement of social care beneficiaries in closed institutions, and in the light of the lack of implementation of the CPT's longstanding recommendation on this issue,<sup>125</sup> **the CPT calls upon the Montenegrin authorities to take steps, including by revising relevant legislation, to ensure that residents of social care institutions have the effective right to bring proceedings to have the lawfulness of their placement decided by a court, and in this connection that they enjoy the rights to a lawyer and to be heard by the judge concerned. Further, the CPT considers that the placement of a resident should be reviewed ex officio by a judicial authority at defined intervals; this is an important safeguard particularly for those residents who do not challenge their placement.**

148. Since the last CPT visit in 2013, a new information brochure had been established for residents and their families and/or guardians, with the support of different human rights NGOs. The new brochure included information on the sending of complaints to the Ombudsman via the complaints boxes set up in the institution, as well as the possibility (for the family or guardian) to address a complaint about the placement decision to the Ministry of Labour and Social Welfare, and to appeal a decision of the Ministry to the Constitutional Court of Montenegro.

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<sup>122</sup> Official Gazette 01/07, 53/16.

<sup>123</sup> To be precise, in 51.75 percent of cases. In the other cases the guardian was a family member.

<sup>124</sup> See CPT/Inf (2014) 16, paragraph 126 and CPT/Inf (2010) 3, paragraph 133.

<sup>125</sup> See CPT/Inf (2014) 16, paragraph 125 and CPT/Inf (2010) 3, paragraph 132.

The CPT notes that an Ethics Code for Persons Employed in Social and Child Protection was adopted in 2015,<sup>126</sup> which also provides for the establishment of a five-member Ethics Board (*Etički Odbor*)<sup>127</sup> which is also empowered to receive complaints. **The CPT would like to receive confirmation of the establishment of the Ethics Board and information on its activities.**

149. Regarding inspections, the CPT's delegation was informed that, pursuant to Article 165 of the Law on Social and Child Protection, the office of an independent "inspector for social and child protection" was established in 2015, to oversee the work of social care institutions with a view to ensuring the provision of services and respect for rights foreseen by the law. At the time of the visit there were three inspectors, employed by the Sector for Social and Child Protection (*Odsjek za inspekciju socijalne i dječje zaštite*) of the Directorate for Inspections (*Uprava za inspekcijske poslove*). They are empowered to act on the basis of complaints or *ex officio*, and to have access to relevant documentation. They may hear and take statements from staff as well as residents of social care institutions, and have the power to impose disciplinary measures. Their activities are published as part of the annual report of the Directorate for Inspections.

150. Regarding external monitoring, the NPM had visited Komanski Most Institution in 2014,<sup>128</sup> and NGOs had also regularly visited the establishment since 2011.

151. Residents maintain regular contact with families through visits and telephone calls. The CPT's delegation welcomed the efforts made by the institution's management to facilitate contact with families, which included supporting transport costs of families for the purpose of visits and accompanying residents to visit their families in the community and, in some cases, in neighbouring countries.

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<sup>126</sup> *Etički Kodeks za zaposlene u oblasti socijalne i dječje zaštite*, Institute for Social and Child Protection, Podgorica, December 2015.

<sup>127</sup> The five members are appointed by the Institute for Social and Child Protection which was established under the 2013 Law on Social and Child Welfare: one representative of each of the Institute for Social and Child Protection, the Ministry of Labour and Social Welfare, and a branch trade union and two representatives of public institutions (one of whom must be from a Social Welfare Centre).

<sup>128</sup> 2014 Annual Report of the Montenegrin NPM, pages 28 to 35.

## **E. Ljubović Centre for Juveniles**

### **1. Preliminary remarks**

152. The CPT's delegation carried out a follow-up visit to Ljubović Centre for Juveniles to examine the implementation of recommendations arising out of the CPT's first visit to the establishment in 2008.<sup>129</sup> The CPT recalls that it was founded in 1965 as a centre for educationally neglected juveniles and was designated in 2006 a "Public Institution for the accommodation of children and juveniles" (*Javna ustanova za smještaj djece i mladih*). In 2014, with the adoption of the 2013 Law on Social and Child Protection (see also paragraph 126), its status was changed to that of "Public Institution for the accommodation of children with behavioural disorders" (*Javna ustanova za smještaj djece sa poremećajima u ponašanju*).<sup>130</sup>

153. The reform of the juvenile justice system in Montenegro resulted in the adoption in 2011 of the Law on the Treatment of Juveniles in Criminal Proceedings (LTJCP).<sup>131</sup> Under the LTJCP, the Ljubović Centre for Juveniles, which is under the authority of the Ministry of Labour and Social Welfare, fulfills the function of a "community-based correctional facility" (*vaspitna ustanova nezavodskog tipa*), for the purposes of Article 25, which provides that a court may impose institutional care in such a facility where there is a need to distance the juvenile from his/her immediate environment and provide him/her with assistance and ongoing supervision. The measure may last from six months to two years and must be reviewed every six months by the court; the person concerned may stay in such a facility up to the age of 21.

Similarly, pursuant to Article 73 of the Law on Misdemeanours, a juvenile may be sent to Ljubović Centre as a correctional measure for a period up to three months.

In addition, juveniles may be remanded to Ljubović Centre pursuant to Article 61 of the LTJCP during preliminary proceedings, and they may also be required to visit the Centre once a day for counselling and treatment under a measure of "increased supervision with daily stay" pursuant to Article 70 of the Law on Misdemeanours (for up to six months) or Article 23 of the LTJCP (for a period between six months and two years).

Unaccompanied foreign juveniles had also been regularly accommodated at the Centre up to 2017.<sup>132</sup>

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<sup>129</sup> See CPT/Inf (2010) 3, paragraphs 137 to 147.

<sup>130</sup> The institution's status has been determined by two Government Decisions: *Odluka o organizovanju javne ustanove za smještaj djece i mladih*, Official Gazette 11/06; *Odluka o ismjenama i dopuni odluke o organizovanju javne ustanove za smještaj djece i mladih*, Official Gazette 13/14.

<sup>131</sup> Official Gazette 64/11. Formerly, the treatment of juveniles in criminal proceedings had been governed by specific provisions of the Criminal Code and Criminal Procedure Code, which still apply in matters not covered by the new law.

<sup>132</sup> According to the information provided to the CPT's delegation, by the time of the visit, they were being accommodated at the Centre for Asylum Seekers, established in Spuž in 2014.

The Centre also accommodates juveniles placed there under a variety of measures of social protection pursuant to the Law on Social and Child Protection.<sup>133</sup>

154. At the time of the visit Ljubović Centre was accommodating 14 juveniles for a total capacity of 40 places.<sup>134</sup> Only six juveniles were present (five male and one female) when the CPT's delegation visited the Centre on 13 and 14 October 2017; of the rest, four were on leave with their families, and another four had escaped.

155. The CPT's delegation observed that the attitude of staff towards residents was respectful and caring; it received no allegations, and found no other indications, of ill-treatment of residents by staff.

Inter-resident violence was also not a major problem. According to the information gathered by the CPT's delegation, when incidents did occur, they were managed effectively by staff.

## 2. Residents' living conditions

156. The Ljubović Centre for Juveniles was completely restructured between 2011 and 2013 and at the time of the visit included:

- Reception Unit (six single rooms), where juveniles generally stayed four to eight weeks on admission for diagnostic assessment (under renovation at the time of the visit but still functioning) accommodating one male resident;
- "Blue House" (five single rooms), for male juveniles placed under the LTJCP, which was accommodating three male residents;
- "Green House" (five single rooms), for female juveniles, and male juveniles under 14 years of age placed under social welfare legislation, which was accommodating one female and one male resident;
- Day Centre for juveniles under a measure of "increased supervision with daily stay".

157. Material conditions in the new structures were of a high standard. The residents were accommodated in single rooms (approximately 12 m<sup>2</sup>), furnished with cupboards, tables and chairs and equipped with sanitary facilities (WC and shower). Rooms were clean, bright and well ventilated. That said, the cupboards available for residents' personal belongings could not be locked. **The CPT recommends that this deficiency be remedied.**

The accommodation buildings were also equipped with central heating and air-conditioning and CCTV in the corridors. On the ground floor of each "House" was a small kitchen as well as a large common area with TV, sofas, computer terminals, table tennis and a small library. Residents' paintings decorated the walls, on which were also posted the UN Convention on the Rights of the Child and the schedule of residents' daily activities. The premises were hygienic, bright and well ventilated.

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<sup>133</sup> In particular, Articles 60, 64, 69 and 70 of the Law on Social and Child Protection.

<sup>134</sup> Eleven were subject to measures under the LTJCP, and three had been sent under social protection measures.

The kitchen and dining areas were likewise hygienic, appropriately furnished and ventilated and pleasantly decorated, and residents received three main meals a day as well as a morning and evening snack. From the information gathered by the delegation, the food was adequate in quantity and quality. The Centre's grounds were green, pleasant and well maintained (by the residents), and there was also a large sports area equipped for football and basketball, which at the time of the visit was being used as a car park. **The CPT does not consider this an appropriate use of the sports ground of the institution.**

158. The CPT's delegation noted that windows in the residents' rooms, which were fitted with special shatterproof glass, were also equipped with metal bars. The CPT considers that to have barred windows in residents' rooms is not conducive to providing an appropriate therapeutic environment for juveniles requiring assistance, support and care, as is the expressed intention of juvenile sanctions under the LTJCP,<sup>135</sup> and as is even more evident in cases where juveniles are placed for social protection reasons.

**The CPT recommends that the bars be removed from the windows of residents' rooms at Ljubović Centre for Juveniles.**

### 3. Staff and care

159. At the time of the visit, the Centre employed a total of 39 staff, including seven pedagogues (six of them specialised), three teachers, one work instructor, two psychologists, four social workers and four security staff. Four staff members, including a social worker, were responsible for each accommodation building, and there was at least one member of staff on duty at any time of day.

In view of the fact that according to the director of the institution two male staff members who had been prosecuted on charges of sexual assault of two residents in 2005 (and subsequently acquitted) had continued to work with juveniles throughout the several years of court proceedings, **the CPT recommends that a clear policy be established which requires any staff member subject to criminal proceedings to be suspended, as is also required by Montenegrin law.**<sup>136</sup>

160. Health care was provided within the national healthcare system outside the Centre. Regarding dental care, the Centre had entered into a contract with a private dentist's surgery. Upon admission all residents were sent for an examination by a doctor, as well as testing for psychoactive substances as required. Female residents were also referred for a gynaecological examination, and follow-up gynaecological treatment was arranged, when necessary. All staff members had apparently received first-aid training, and there was a first-aid kit in each of the accommodation buildings. Residents were not, however, screened on arrival for transmissible diseases.

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<sup>135</sup> Pursuant to Article 15 of the LTJCP, the "purpose of sanctions is to provide protection and support to juvenile criminal offenders by way of supervision, general and vocational education, and development of a sense of personal responsibility in order to allow them to be educated and developed as well as to prevent recidivism in future".

<sup>136</sup> Pursuant to Article 130 of the Labour Law of Montenegro (Official Gazette 49/08, 88/09, 26/10, 59/11, 66/12, 31/14, 53/14), an employee who is subject to criminal proceedings for an offence related to his/her work must be suspended from duties.

**The CPT recommends that all juveniles admitted to Ljubović Centre for Juveniles undergo appropriate screening for transmissible diseases.**

161. The lack of a nurse on staff,<sup>137</sup> meant that medication prescribed to the residents was prepared and distributed by a social worker or educator, and that stocks of medication were under the responsibility of a social worker. The medical files of residents were stored in a locked cupboard in the office shared by the social worker and the psychologist on duty.

In their letter of 23 January 2018, the Montenegrin authorities explained that, pursuant to Articles 5 and 11 of the Rulebook on More Detailed Requirements for the Provision and Use, through Normative and Minimum Standards, of Services for Accommodating Children and Young People in an Institution and Small Group Community,<sup>138</sup> Ljubović Centre for Juveniles ensured the provision of health care to residents through the public health-care system. This means that they “are treated in health care institutions in the local community and the occasional administered therapy is given with supervision, i.e. by educators, as the parents do it at home”. Further, children with “serious psychological or addictive problems” are not placed in the Centre, but rather in specialised institutions pursuant to Article 28 of the LTJCP.

This explanation does not answer the CPT’s concerns. In the Committee’s view, in an institution such as Ljubović Centre, it is not within the competence of non-health-care staff to dispense prescription medication, which should only be carried out by a nurse or a trained pharmaceutical dispenser. Further, medical files of residents should be under the responsibility of health-care staff.

**The CPT recommends that the management of Ljubović Centre for Juveniles ensure that the staffing complement includes a position for a nurse, who should be responsible for health-care issues, including the distribution of medication and the confidentiality of residents’ medical files.**

Furthermore, in the light of the lack of any regular psychiatric input and the vulnerability of the residents of Ljubović Centre, **the CPT recommends that the Montenegrin authorities ensure that a psychiatrist visits the Centre on a regular basis.**

162. The law clearly lays out a developmental approach for juveniles based on an individual treatment plan. Such a plan defines a juvenile’s involvement in education and training, leisure time use and management, cooperation between the institution and the family and legal guardian, and other psychosocial measures.<sup>139</sup>

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<sup>137</sup> At the time of the 2008 visit, the Centre had had a full-time nurse on staff.

<sup>138</sup> *Pravilnik o bližim uslovima za pružanje i korišćenje usluga, normativima i minimalnim standardima usluga za smještaj djece i mladih u ustanovu i malu grupnu zajednicu*, Official Gazette, 43/14.

<sup>139</sup> See Article 121, LTJCP.

At Ljubović Centre for Juveniles, residents could attend classes in external schools corresponding to their educational level. In particular cases, for example where the resident had learning difficulties or had not regularly attended school, individual educational programmes were organised by the Centre's staff. In addition, the Centre offered vocational training in the metalwork workshop, access to a gymnasium and outdoor sports activities, and a variety of recreational activities (excursions into town, films, etc.). At the time of the CPT's visit, one of the male residents had remunerated work in the town. There was also a small but adequate library in each House. The workshop, gymnasium and outdoor sports facilities were of a good standard and well equipped.

Recreational and sports activities were also organised, on a more or less *ad hoc* basis, on weekends, including on some occasions with the support of local NGOs. Overall, the individual treatment plans and the activities proposed were of a good standard.

#### 4. Means of restraint

163. There was no resort to mechanical restraint, seclusion or chemical restraint at Ljubović Centre for Juveniles.

On the other hand, the Centre had established a "time-out room" in May 2017 equipped with CCTV. Placement in the room was considered a "protective measure" for residents' exhibiting aggressive or violent behaviour. According to the documentation examined by the CPT's delegation, the room had been used four times between May and October 2017. There was a register for use of the room; however, entries were incomplete: for example, the duration of the use of the room was indicated in only one instance (35 minutes).

164. The Committee considers that a "time-out measure" for juveniles in a state of agitation should last no longer than minutes, up to a maximum of one hour, and should involve a number of measures to calm the juvenile, including dialogue and the presence of a qualified staff member (not a security guard) in the room with the juvenile. Such measures should always be properly recorded, including the time of the beginning and end of the measure, the person who authorised it, the underlying reasons and any notable incidents.

The CPT has serious concerns about the protocol established for use of the "time-out room", which describes a procedure akin to seclusion for persons exhibiting aggressive behaviour arising out of mental disorder, which is clearly inappropriate.

**165. The CPT recommends that the management of Ljubović Centre for Juveniles review the use of the "time-out room" and the protocol for its use in the light of the above remarks. Further, the Committee recommends that the Montenegrin authorities ensure that a procedure is effectively implemented to ensure that residents who are in a state of agitation or exhibit aggressive behaviour which cannot be dealt with adequately by a "time-out measure" are referred to the care of qualified health-care staff.**

## 5. Safeguards

166. With respect to contact with the outside world, juveniles could receive visits every day from 11 a.m. to 12 noon and from 4.30 to 7 p.m. Family members wishing to visit had first to receive authorisation from the court or a social welfare centre. Residents also had access to their mobile phones and to internet between specific hours.

167. Residents received an information brochure on arrival entitled “Code of Conduct: Rules and obligations during stay in the Reception Unit” which contained basic information on the rules of the centre, as well as on the functioning of the Reception Unit. The brochure, written in rather official language, did not include details on residents’ legal status and rights, on their further stay in the Centre, or on complaints mechanisms. On the other hand, the Centre had developed an internal protocol for dealing with complaints, which is a positive development. In addition, residents could send complaints to the Ombudsman via boxes which had been set up in the different accommodation buildings.

**The CPT recommends that residents of Ljubović Centre for Juveniles be provided with comprehensive information on their placement, in the form of a brochure written in child-friendly language, which includes details as to their legal status and rights, the different stages of their stay in the Centre, and complaints mechanisms.**

168. Regarding external monitoring, the NPM had visited Ljubović Centre for Juveniles in 2015.<sup>140</sup> As for inspections, details concerning the office of an independent “inspector for social and child protection” are set out in paragraph 149.

## 6. Other issues

169. The Centre’s internal Protocol on Pedagogical and Protection Measures (see paragraph 166 above) also included a variety of disciplinary measures, ranging from a verbal warning to withdrawal of access to TV, internet or pocket money, and temporary suspension of possibilities to leave the institution for visiting the town or family, or to take part in excursions. The CPT’s delegation was dismayed to note that self-harming was considered as a violation of the rules and subject to disciplinary sanctions. In the CPT’s view, acts of self-harm may frequently reflect mental health problems and should be approached from a therapeutic rather than a repression-oriented standpoint.

**The CPT recommends that the management of Ljubović Centre for Juveniles ensure that self-harm is not regarded as a disciplinary offence and that those relevant internal instructions and protocols are amended accordingly.**

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<sup>140</sup> 2015 Annual Report of the Montenegrin NPM, pages 19 to 28.

170. Furthermore, the CPT's delegation was informed that the right of residents to call relatives could be restricted as a punishment and that residents could be subjected to segregation in their own rooms for periods up to seven days, in some cases in conditions akin to solitary confinement (door locked; no association with other residents, including during outdoor exercise and mealtimes). Rooms were not equipped with call bells. In addition, residents segregated in their rooms were not allowed to receive family visits. The CPT notes that the Protocol on Pedagogical and Protection Measures established by the Centre does not provide for any form of segregation, so that the legal basis for the measure is unclear.

The CPT wishes to stress that any form of isolation may have a considerably detrimental effect on the physical and/or mental well-being of juveniles. In this regard, the Committee observes an increasing trend at the international level to promote the abolition of solitary confinement as a disciplinary sanction in respect of juveniles. Particular reference should be made to the United Nations Standard Minimum Rules on the Treatment of Prisoners (Nelson Mandela Rules) which have recently been revised by a unanimous resolution of the UN General Assembly and which explicitly stipulate in Rule 45 (1) that solitary confinement shall not be imposed on juveniles. The CPT fully endorses this approach.

**The CPT therefore recommends that the practice of subjecting residents of Ljubović Centre for Juveniles to segregation in conditions akin to solitary confinement be abolished and that relevant internal instructions and protocols concerning disciplinary sanctions be explicit on this point.**

**Further, the Committee recommends that the Montenegrin authorities take steps to ensure that the disciplinary sanctions in place do not lead to a total prohibition of family contacts and that any restrictions on family contacts as a form of disciplinary punishment are applied only when the offence relates to such contacts.**

**APPENDIX I:**

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

**Police establishments**

- Podgorica Security Centre (CB)
- Cetinje Security Department (OB)
- Danilovgrad Security Department (OB)
- Budva Security Centre (CB)
- Tivat Security Department (OB)
- Kotor Security Centre (CB)
- Ulcinj Security Department (OB)
- Bijelo Polje Security Centre (CB)
- Bar Security Centre (CB)

**Prison establishments**

- Bijelo Polje Prison
- Institution for Sentenced Prisoners (KPD), Podgorica
- Remand Prison, Podgorica

**Psychiatric establishments**

- Dobrota Special Psychiatric Hospital
- Psychiatric Clinic of the Clinical Centre of Montenegro

**Social welfare establishments**

- Komanski Most Institution for People with Special Needs
- Ljubović Centre for Juveniles.

**APPENDIX II:**

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

**A. National authorities**

**Ministry of Justice**

Zoran Pažin	Deputy Prime Minister and Minister of Justice
Nataša Radonjić	Acting Director General of the Sector for the Enforcement of Criminal Sanction (ZIKS)
Đina Popović	Advisor to the Minister

**Ministry of Interior**

Dragan Pejanović	State Secretary
Danilo Čupić	Director General for Supervision
Violeta Vujisić	Head of Department for Internal Control on the Protection of Confidential Data
Milan Adžić	Head of the Internal Control Department

**Ministry of Health**

Kenan Hrapović	Minister
Alma Hajdarpašić Drešević	Director General for Health Protection
Miro Knežević	Director General for Public Health and Health Protection

**Ministry of Labour and Social Policy**

Kemal Purišić	Minister
Željko Šofranac	Director of the Directorate for the Care of Refugees
Vesna Cimbaljević	Advisor at the Directorate for Social Care and Child Protection
Lela Vuković	Chief of the Minister's Cabinet

**State Prosecutor's Office**

Liljana Klikovac Head of Podgorica Basic Prosecutor's Office

Ana Bošković Prosecutor at Podgorica Basic Prosecutor's Office

**Protector of Human Rights and Freedoms**

Sučko Baković Protector of Human Rights and Freedoms (Ombudsperson)

Zdenka Perović Deputy Protector for Prevention of Torture in charge of the National Preventive Mechanism (NPM)

**Council for Civic Control of the Police**

Dražen Cerović Council Member

Aleksandar Zeković Council Member

**B. Non-governmental organisations**

Human Rights Action

Civic Alliance for Human Rights