



**Platform**  
of Organizations for  
Cooperation with UN  
Human Rights Mechanisms

# **The Platform of Organizations for Cooperation with UN Human Rights Mechanisms**

**The Cluster for Torture**

**Belgrade, 11 October 2021**



*Distinguished members of the Committee against Torture, we hereby submit the Shadow Report for the 72 Session (08 Nov 2021 - 03 Dec 2021) of the respected Committee where the Third periodic report submitted by Serbia under article 19 of the Convention will be examined. The Report was drafted and edited by the members of the Platform of Organizations for Cooperation with UN Human Rights Mechanisms - the Cluster for Torture. The Platform consists of the following organizations: Astra; Atina; A11 – Initiative for Economic and Social Rights; Belgrade Centre for Human Rights; Center for Independent Living of PWD's Serbia; Child Rights Centre; LGBTI Equal Rights Association for Western Balkans and Turkey; FemPlatz; GETEN; Group 484; Mental Disability Rights Initiative of Serbia (MDRI-Serbia); Lawyers Committee for Human Rights YUCOM; International Aid Network; The Network of Organizations for Children of Serbia – MODS; National Organization of Persons with Disabilities of Serbia; Center for Support of Woman - SOS Vojvodina Network; Standing Conference of The Roma Association of The Citizens.*

On the work of the Platform see more at: <https://platforma.org.rs/>.



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## Summary

1. Serbia has failed to amend the Criminal Code and introduce the definition of torture through one criminal offence which would contain all elements set out in Article 1 of the Convention, and which would have prescribed penalties which are commensurate to the gravity of the torture crime, and where the statute of limitation would be abolished (**Chapter I**)

2. The practice of collective expulsions at the borders with North Macedonia and Bulgaria continued and are conducted in a manner in which refugees, asylum seekers and migrants are forcibly removed to these countries without individual assessment of the risks of *refoulement*, and in a procedure in which the foreigners would have the possibility to attain lawyer, use interpretation services and lodge a remedy against the expulsion decision which would have an automatic suspensive effect. The Constitutional Court of Serbia rendered a decision in which it found that group of 17 refugees were collectively expelled to Bulgaria in February 2017 (**Chapter II.1.**).

3. The situation remained unchanged at the 'Nikola Tesla' airport in Belgrade, where refugees, asylum seekers and migrants are still arbitrary deprived of their liberty and forcibly removed to third country or country of origin without any assessment on the risks of *refoulement*. One of such cases was communicated to the Government of Serbia by the European Court of Human Rights and is related to an Iranian refugee who was arbitrarily detained for 28 days at the transit zone without a detention decision (**Chapter II.2.**).

4. CAT found violation of Article 3 of the Convention in the case of *Ayaz v. Serbia*.<sup>1</sup> Mr. Ayaz was extradited to Turkey despite CAT's interim measures.<sup>2</sup> Until the date this report was submitted, the State party has failed to implement the decision of the Committee. The data on extradition practice is not provided by the State party, and according to some reports, it is kept secret by the Ministry of Justice (**Chapter II.3.**)

5. The recognition rate in asylum procedure remains low, and the functioning of the asylum system cannot be considered as effective. The following changes are crucial for significant improvements of the system: 1) provide refugees with the possibility to obtain travel document; 2) provide asylum seekers with the possibility to obtain working permit in a period that is significantly shorter than 9 months and 3) decrease an average length of asylum procedure (**Chapter II.4.**).

6. Impunity of state agents for acts of torture still represents a systemic problem. This implies that the vast majority of criminal complaints are dismissed before all reasonable evidentiary activities are undertaken, e.g., forensic medical examination (**Chapter III.2.**), question of all the witnesses, and others (**Chapter III.1.**). This has been the conclusion of the CPT in its 2017 report, as well as the conclusion of the Belgrade Center for Human Rights who has a unique and comprehensive database on the judicial practice which also covers the reporting period. The systemic impunity can be easily depicted through the July protests from 2020 where several dozen citizens were ill-treated by the police and only one case has reached an indictment stage despite dozens of criminal complaints submitted against more than 100 police officers (**Chapter III.3.**).

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<sup>1</sup> CAT, *Ayaz v. Serbia*, Communication No. 758/17, Decision of 3 August 2019, available at: <https://bit.ly/37WJvik>.

<sup>2</sup> DeutscheWelle, 'Serbia extradites Kurdish politician Cevdet Ayaz to Turkey despite UN warning', 27 December 2017, available at: <http://bit.ly/2VH1v8T>.



7. The victims of torture and other forms of ill-treatment are deprived of redress in both legal framework and in practice. The range of victims implies persons who suffered torture in the Yugoslav wars in 90s, refugees, asylum seekers and migrants and citizens of Serbia who were tortured by police or prison officers (**Chapter IV**).

8. The practice regarding the protection of the victims of human trafficking remains unchanged. Women are still the most vulnerable group targeted by the human traffickers, but also children. Criminal proceedings are being conducted in a manner which implies re-traumatization and encounters with perpetrators and abusers. Judicial authorities need to invest more effort to protect the victims of human trafficking and to treat them as a particularly vulnerable witness. The compensation as a part of redress is still not awarded commensurately to the gravity of consequences suffered by the victims (**Chapter V**). The Constitutional Court rendered a decision stating that competent state bodies **have not fulfilled their positive obligations** in the procedural aspect in relation to the prohibition of all forms of trafficking guaranteed by the Constitution, and **failed to conduct an effective and fair procedure**, which would result in the issuance of a relevant court judgment (**Chapter V.5.1**).

9. The domestic violence is still widespread, especially increasing during the COVID-19 lockdown. Only in 2020, 5932 cases of domestic violence were reported. Total of 2337 perpetrators of the crime of domestic violence were convicted during 2020, of which 669 were sentenced to prison, while 1508 perpetrators received suspended sentence. A total of 138 were sentenced to house arrest and 6 of them to fines. Apart from the fact that the number of reported cases of violence is high, the penal policy gives even more reasons for concern (**Chapter VI**).

10. Journalists, human rights defenders and LGBTQI persons are still subjected to public attacks and threats. The response of relevant state authorities are still insufficient and the public condemnation from the highest state officials is still lacking (**Chapter VII**).

11. The status of persons with mental and physical disabilities remains a serious concern. The problems regarding the deprivation of legal capacity leads to a high rate of institutionalization which is considered to be voluntarily because it is based on the consent of temporary legal guardian. The treatment and the status of children in social care institutions is particularly worrying, leading often to the treatment that can be described as inhumane and degrading. The COVID-19 circumstances have led to a complete lockdown of social care institutions, which, due to a high rate of overcrowding have led to an increase risk of infection. This has been particularly worrying in the social care institutions for old persons where the death rates have been the highest (**Chapter VIII**).

12. Prison overcrowding and excessive use of short term prison sentences and pre-trial detention has remained unchanged, especially in the 4 biggest penitentiaries in Belgrade, Požarevac, Sremska Mitrovica and Niš (**Chapter IX**).

13. Serbia has introduced the life sentence without parole for several crimes in the Criminal Code, despite criticism from relevant national and international institutions, but also the most distinguished academics. Two persons have already been sentenced to life imprisonment without parole (**Chapter X**).

14. The work of the Ombudsman and the NPM in the field of torture prevention and reaction has severely deteriorated. The vast majority of the most distinguished CSOs stopped its cooperation. The results and findings of the Ombudsman are completely contrary to the findings of international and national institutions and human rights organizations (**Chapter XI**).



## I. The definition of torture, prescribed penalties and statute of limitation (Article 1 and 4 of the Convention)

1. The Republic of Serbia<sup>3</sup> has failed to amend Articles 136 (Extortion of Confession) and Article 137 (Torture and Ill-treatment) of the Criminal Code<sup>4</sup> and in line with previous recommendations of the Committee against Torture<sup>5</sup> which implies that the crime of torture is still not defined in a manner prescribed in Article 1 of the Convention against torture and other cruel, inhumane or degrading treatment or punishment.<sup>6</sup> The only change in the previous period is that maximum penalty for an aggravated form of the crime of torture and ill-treatment (Article 137) when committed by the state official was increased from 8 to 10 years of imprisonment, which is a positive step, but still insufficient.

2. The existing deficiencies are the following:<sup>7</sup>

1. The definition of the crime torture and ill-treatment (Article 137) is still widely defined in terms of the perpetrators. This crime can be committed by both state and non-state actors
2. The prescribed penalties are still not commensurate to the gravity of the torture offence and should be increased in order to encompass the forms of torture which, for instance imply severe bodily injuries or even fatal outcome
3. Articles 136 and 137 are basically overlapping and there is no difference between aggravated form of torture and ill-treatment (Article 137, paragraph 2 read in conjunction with Article 3) when committed by a state official and extortion of confession (Article 136). This legal solution represents unnecessary complication in terms of its practical application and qualification of identical or similar incriminating behaviour under different articles of the CC
4. It is still possible for the statute of limitation to expire which creates a fruitful ground for impunity.

## II. The principle of *non-refoulement* (Article 3 of the Convention)

### II.1. Refugees, asylum seekers and migrants' access to territory at the border

3. The State party has failed to establish formalized border monitoring mechanism which would include UNHCR and civil society organizations cooperating with the Ministry of Interior.<sup>8</sup> Additionally, there is no official data available in public sources which would show how many persons in need of international protection were refused entry in line with the Foreigners Act<sup>9</sup> or denied access to territory through another legal avenue. Available statistics indicate that vast majority of persons denied access to territory through the decision on refusal of entry are not members of refugee, migrant and asylum seeker population.<sup>10</sup> However, the public statements of different State officials indicate that from 2016 to 2020 at least 95,000 refugees and migrants were prevented from 'illegally' crossing Serbian border. It remains unclear in which manner refugees and migrants were prevented because the State does not publish official data on the number of decisions on refusal of entry, but it is reasonable to assume that this number does not match the below stated numbers (Table no. 1). Moreover, the decision on refusal

<sup>3</sup> Hereinafter: Serbia.

<sup>4</sup> *Official Gazette of the Republic of Serbia*, no. 85/2005, 88/2005., 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019, available at: <https://bit.ly/3oxpesn>, hereinafter: CC.

<sup>5</sup> Hereinafter: CAT.

<sup>6</sup> Hereinafter: Convention.

<sup>7</sup> See also CAT, 'Concluding observations on the second periodic report of Serbia \* \*', 3 June 2015, CAT/C/SRB/CO/2\*, hereinafter: CAT CC 2015, available at: <https://bit.ly/2RKVB8J>.

<sup>8</sup> CAT CC 2015, para. 15.

<sup>9</sup> *Official Gazette of the Republic of Serbia*, no. br. 24/2018 i 31/2019, Article 15.

<sup>10</sup> Commissariat for Refugees and Migration, 'Migration profile of the Republic of Serbia 2020', available at: <https://bit.ly/3iQL2vA>, p. 30 and 'Migration profile of the Republic of Serbia 2019', available at: <https://bit.ly/30jNHrn>, p. 23.



of entry was introduced in the Serbian legal framework in October 2018, and readmission agreements with Bulgaria and North Macedonia were either dysfunctional (North Macedonia) or rarely applied (Bulgaria) in the period 2016-2019. Thus, it is reasonable to assume that refugees and migrants were collectively expelled to North Macedonia or Bulgaria.<sup>11</sup> To put it in simple words, persons who might be in need of international protection are at risk of being denied access to territory in informal procedure in which foreigners are not allowed to contest their removal in procedure prescribed by the law, with the assistance of the competent legal representative and interpreter and with the possibility to lodge a remedy with automatic suspensive effect. Thus, the guarantees against *refoulement* at border are not put in place and the State party should invest more efforts to establish border procedures and practices which would provide procedural safeguards in relation to the risks of torture and other cruel, inhumane or degrading treatment or punishment in the receiving states. The partnership with UNHCR and CSOs should be considered as one of the avenues.

**Table no. 1: the number of persons prevented from illegally crossing the border (statements of the state officials)**

Year	2016	2017	2018	2019	2020	2021	Total
No. of persons denied access to territory	(at least) 18,000 <sup>12</sup>	(at least) 21,000 <sup>13</sup>	(at least) 23,000 <sup>14</sup>	20,221 <sup>15</sup>	38,226 <sup>16</sup>	N/A	(at least) 95,000

4. In December 2020, the Constitutional Court of Serbia rendered a decision finding that 19 refugees from Afghanistan were collectively expelled to Bulgaria in February 2017, confirming that this kind of practice has been applied in the reporting period.<sup>17</sup> Additionally, the COVID-19 restriction measures have led to a significant decrease in arrivals to Serbia in the period March-July 2020.<sup>18</sup> None of the COVID-19 preventive measures introduced at the border contained guarantees against *refoulement*.<sup>19</sup> Several other incidents of collective expulsions to North Macedonia were reported in 2020.<sup>20</sup> And finally, in 2020, Serbia has established the barb-wire fence towards North Macedonia setting up a dangerous precedent with regards to access to territory of persons in need of international protection and increasing the risks of *refoulement* to third countries who might not be considered as safe for refugees and asylum seekers.<sup>21</sup>

## II.2. Access to territory at 'Nikola Tesla' Airport and the status of refugees, asylum seekers and migrants in the transit zone

<sup>11</sup> North Macedonia and Bulgaria are neighbouring states from which the vast majority of refugees and migrants are entering Serbia.

<sup>12</sup> Danas, 'Migrants unhappy with conditions of life', 27 December 2016, available in Serbian at: <http://bit.ly/2koDcN7>.

<sup>13</sup> Alo, 'Da nije vojske i policije - Vulin: Sad bi bilo u Srbiji 20.000 migranata, zamislite to!', 22 July 2017, available in Serbian at: <http://bit.ly/2DGDgRx>.

<sup>14</sup> Serbian Army, 'Престанак ангажовања Заједничких снага Војске Србије и МУП', 2 April 2018, available in Serbian at: <https://bit.ly/2EolHol>.

<sup>15</sup> BETA, 'MUP: Na dnevnom nivou spreči se ilegalni ulazak 2'0 do 50 ilegalnih migranata', 26 November 2019, available (in Serbian) at: <http://bit.ly/2TdLuYL>.

<sup>16</sup> Danas, 'Vučić: There are currently 3,977 migrants in Serbia, last year we prevented more than 38,000 illegal crossings', 17 June 2021, available (in Serbian) at: <https://bit.ly/3koFNVO> and Ministry of Interior, Извештај о спровођењу Стратегије супротстављања ирегуларним миграцијама за период 2018-2020. година, available at: <https://bit.ly/3Dtss4r>, p. 10.

<sup>17</sup> Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YJXJhi>.

<sup>18</sup> ECRE, Country Report: Serbia – 2020 Update, AIDA, Brussels 2021, available at: <https://bit.ly/2VXwhim>, pp. 20-24.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> Radio Free Europe, 'Srbija diže žičanu ogradu na granici sa Severnom Makedonijom', 18 August 2020, available at: <http://bit.ly/3iDWyce>.



5. The practice of the Border Police Station at 'Nikola Tesla' Airport is still flawed and denies persons in need of international protection the rights of persons deprived of liberty and guarantees against *refoulement*.<sup>22</sup> First of all, persons who might be in need of international protection are arbitrary deprived of their liberty. This implies that persons who, according to the assessment of the border police officers, do not meet the requirements to enter Serbia, are detained in the transit zone for as long as the flight company which is obliged to return them to the country of arrival, does not secure the place on the flight. Thus, persons who might be in need of international protection could be deprived of their liberty from 1 day to several weeks. The decision on detention in the transit zone is not rendered at all because the border police authorities do not consider this practice as detention. Thus, these people are further denied access to lawyer, interpreter and the possibility to challenge their detention before the judicial body. One of such cases was communicated to the Government of Serbia by the European Court of Human Rights and is related to an Iranian refugee who was detained for 28 days at the transit zone without a detention decision.<sup>23</sup>

6. Additionally, until October 2018, persons who might be in need of international protection were forcibly removed without any decision which was rendered in a procedure where foreigners could, with the assistance of competent legal representative and interpreter, contest their removal and outline the potential risks of *refoulement*; and lodge a remedy with the suspensive effect. In other words, they were simply boarded back on the plane and sent to the country of origin or third country. From October 2018, a new Foreigners Act came into force. This legislative change has introduced a new institute – decision on refusal of entry.<sup>24</sup> However, the Border Police Station at 'Nikola Tesla' Airport lacks the resources to assess risks of *refoulement*. The decision on refusal of entry is issued in a procedure which implies the use of a template where only personal data of a foreigner is included. Persons that might be in need of international protection do not take part in such a procedure and are denied access to a lawyer and interpreter. The Foreigners Act implies that appeal against such decision does not have an automatic suspensive effect. This has led to a situation in which persons in need of international protection have been subjected to the practice which does not contain guarantees against *refoulement* in the entire reporting period. The vast majority of persons who were granted access to territory and asylum procedure at the airport were supported by civil society organizations who occasionally have access to people who address them from the transit zone. However, all foreigners deprived of their liberty in the transit zone should be offered free legal aid by the Ministry of Interior. Examples and data on the contentious practice at Nikola Tesla Airport which occurred in the reporting period goes as follows:

- In November 2016, the European Court of Human Rights indicated to the Government of Serbia not to expel an Iranian asylum seeker back to his country of origin. He was detained at the airport transit zone for 28 days.<sup>25</sup>
- The practice of the Border Police Station in Belgrade was criticised by the UN Special Rapporteur on Torture who visited Serbia in November 2017.<sup>26</sup> In the first six months of 2017, Border Police Station in Belgrade assessed that 498 people did not meet the requirements to enter Serbia. Out of that number, 22 could be considered as likely to be in need of international protection since they were from Palestine (4), Syria (3), Libya (3), Iraq (3) and Afghanistan (2). These people were returned to third countries such as Greece, Lebanon, United Arab Emirates (UAE), and Turkey. Additionally, it should be noted that that out of 498 foreigners, 112 were from Turkey, which should raise a concern due to the well-known political situation in that country.<sup>27</sup>
- A total of 1,909 decisions on refusal of entry were delivered in the period 1 January to 1 October 2019. Out of the total number, the nationalities which could be of interest for this Report (due

<sup>22</sup> CAT CC 2015, para. 14.

<sup>23</sup> *H.G.D. v. Serbia*, App. No. 3158/20, communicated to the Government of Serbia on 12 July 2021, available at: <https://bit.ly/3zmouby>.

<sup>24</sup> Foreigners Act, Article 15.

<sup>25</sup> *H.G.D. v. Serbia*, App. No. 3158/20, communicated to the Government of Serbia on 12 July 2021, available at: <https://bit.ly/3zmouby>.

<sup>26</sup> Special Rapporteur for Torture, 'Preliminary observations and recommendations of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Nils Melzer\* on the official visit to Serbia and Kosovo1 – 13 to 24 November 2017', available at: <http://bit.ly/2DBrBnT>.

<sup>27</sup> ECRE, 'Country Report: Serbia – 2017 Update,' AIDA, Brussels 2017, available at: <https://bit.ly/2XtRWiD>, p. 16.



to their origin) are the following: Turkey (317), Burundi (29), Cuba (14), Iran (10), Iraq (8), Syria (8), Palestine (1) and Afghanistan (1). As for the receiving states from which persons in need of international protection are usually arriving, from the principle of non-refoulement perspective, these are the most contentious ones: Turkey (693 returns), UAE (35), Qatar (29), Greece (20), Iran (2) and Lebanon (2).<sup>28</sup>

- On 10 February 2019, a Burundi citizen M.F. had been detained at the airport transit zone for 4 days. He stated that he wanted to apply for asylum but was denied that possibility by the police. Eventually, he was issued the decision on refusal of entry and was sent back to Qatar<sup>29</sup> despite the fact that Qatari authorities have been criticized in the latest CAT's findings for detaining irregular migrants in inhumane and degrading conditions and for the purpose of forced return without adequate assessment of the risks of *refoulement*.<sup>30</sup>
- On 21 February 2019, a high-profile political refugee from Turkey was automatically served a decision on refusal of entry and was about to be returned to Qatar and [possibly] further to Turkey. Only after CSOs intervention he received a registration certificate and allowed access to territory and asylum procedure.<sup>31</sup>
- In February 2020, 3 Cubans who expressed the intent to apply for asylum were issued a decision on refusal of entry, and were returned, most likely, to Russia.<sup>32</sup>
- In February 2021, a political refugee of Kurdish origin from Turkey was refused entry and was denied access to lawyers. He was returned to Iraq despite expressing intention to apply for asylum. Another similar case happened the following weekend, and it is obvious that Kurdish refugees from Turkey are at a very high risk of *refoulement* at the airport.<sup>33</sup>
- On 15 September 2021, the European Court of Human Rights granted the request for interim measures and indicated to the Government of Serbia not to remove S.O., Kurdish political activist who faced life sentence without parole, to Turkey.<sup>34</sup>

### II.3. Extradition practice

7. When it comes to other forcible removal procedures, it is important to note that CAT has found violation of Article 3 of the Convention in the case of *Ayaz v. Serbia*.<sup>35</sup> Mr. Ayaz was extradited to Turkey despite CAT's interim measures.<sup>36</sup> Until the date this report was submitted, the State party has failed to implement the decision of CAT and award pecuniary and non-pecuniary damage, establish the monitoring mechanism that will observe the well-being of Mr. Ayaz and conduct trainings of judicial officials with an aim to avoid similar cases in the future. The data on extradition practice is not provided by the State party, and according to some reports, it is kept secret by the Ministry of Justice.<sup>37</sup> It would be useful for this Periodic review to obtain this data from the State and especially in relation to the cases of extradition to Turkey, China, Indonesia, Russia and others.

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<sup>28</sup> ECRE, 'Country Report: Serbia – 2019 Update,' AIDA, Brussels 2017, available at: <https://bit.ly/3hMZtAg>, p. 23.

<sup>29</sup> *Ibid.*, p. 26.

<sup>30</sup> CAT, 'Concluding observations on the third periodic report of Qatar', 4 June 2018, CAT/C/QAT/CO/3, available at: <https://bit.ly/3CGEqHN>, paras. 37-38 and 41-42.

<sup>31</sup> ECRE, 'Country Report: Serbia – 2019 Update,' AIDA, Brussels 2017, available at: <https://bit.ly/3hMZtAg>, p. 26.

<sup>32</sup> BCHR, 'Right to Asylum in the Republic of Serbia – Periodic Report for January-March 2020', available at: <https://bit.ly/2LZHGsw>, p. 13.

<sup>33</sup> ECRE, 'Country Report: Serbia – 2020 Update,' AIDA, Brussels 2017, available at: <https://bit.ly/2VXwhim>, p. 30.

<sup>34</sup> ECtHR, *Ozen v. Serbia*, App. No. 45795/21, Request to Interim Measures granted on 15 September 2021, available at: <https://bit.ly/3tRsnUw>.

<sup>35</sup> CAT, *Ayaz v. Serbia*, Communication No. 758/17, Decision of 3 August 2019, available at: <https://bit.ly/37WJvik>.

<sup>36</sup> DeutscheWelle, 'Serbia extradites Kurdish politician Cevdet Ayaz to Turkey despite UN warning', 27 December 2017, available at: <http://bit.ly/2VH1v8T>.

<sup>37</sup> Radio Free Europe, 'Izručenje Turkoj iz Srbije: Ministarstvo ima, pa nema podatke' 9 August 2021, available (in Serbian) at: <https://bit.ly/3nL5fGf>.

## II.4. Asylum Procedure

8. In the period from 2016 to the September of 2021 a total of 42,473 persons expressed their intention to apply for asylum. However, only 1,632 of them lodged the asylum application. This further implies that Serbia is still considered to be a transit country for refugees and asylum seekers.<sup>38</sup>

Year	2016	2017	2018	2019	2020	2021 (January- August)	Total
Expressed intentions to apply for asylum	12,699	6,200	7,638	12,918	2,830	188	42,473

Year	2016	2017	2018	2019	2020	2021 (January- August)	Total
Asylum Applications	574	233	324	249	145	107	1,632

9. In the same period, the Asylum Office rendered a total of 1,181 decisions.

Year	2016	2017	2018	2019	2020	2021 (January- August)	Total
The number of all types of decisions	326	170	207	227	161	90	1,181

10. Out of the total number, decisions on discontinuing asylum procedure represent the vast majority. In the period covered by this periodic review, Asylum Office rendered **731 decisions** on discontinuing asylum procedure in relation to 1,160 persons. This indicates that **62%** of asylum procedures were terminated due to the absconding of asylum applicants. This number further indicates that Serbian asylum system cannot be considered as effective because the vast majority of asylum seekers decides to leave before the first instance decision is rendered. The main reasons for absconding are the following:

1. Lack of possibility to obtain a travel document upon receiving international protection
2. Inability to access the labour market for 9 months after asylum application is lodged
3. The length of the first instance asylum procedure (between 9 and 14 months)

<sup>38</sup> All of the statistical data is compiled by the UNHCR office in Serbia.

Year		2016		2017		2018		2019		2020		2021 (January-August)		Total	
No. of decisions discontinuing asylum procedure	No. of persons	231	491	98	154	128	176	134	161	90	119	50	59	731	1,160

11. When it comes to the application of the safe third country concept, which was indicated as a concerning practice in the previous Concluding observations of the respected Committee,<sup>39</sup> it would be fair to praise Serbian authorities for deviating from such practice and thus, allowing more asylum seekers to have their cases decided on the merits. In the period covered by this review, a total of **149 decisions** dismissing asylum applications on the basis of the safe third country concept have been rendered in relation to 182 persons. This represents **13%** of total decision delivered in the period 2016-2021. In the period 2020-2021, only 8 such decisions were delivered indicating that Serbian asylum system has overcome the flawed practice which plagued the same system as indicted in the previous periodic review (2010-2015).

Year		2016		2017		2018		2019		2020		2021 (January-August)		Total	
No. of decisions applying the safe third country concept	No. of persons	51	64	47	53	33	41	10	16	2	2	6	6	149	182

<sup>39</sup> Committee against Torture, Concluding observations on the second periodic report of Serbia \* \*, 3 June 2015, CAT/C/SRB/CO/2\*, paragraphs 14 and 15.



12. A total of **301 decisions** were rendered on the merits in the reporting period encompassing 419 persons, which is 25% of total decisions rendered in the reporting period. A total of **106 decisions** granting asylum were rendered in relation to 157 persons. Out of that number, 51 decision implied subsidiary protection (84 persons). Additionally, 55 decisions implied refugee status and encompassed a total of 73 persons. This data indicates that the recognition rate in Serbian asylum system significantly increased. Still, the recognition rate in the reporting period remains extremely low amounting to 9% of all the decisions delivered.

13. It is also important to note that the modest progress which was determined in the reporting period can mostly be attributed to the Asylum Office as the first instance authority. On the other hand, the practice of Asylum Commission (2<sup>nd</sup> instance authority) and the Administrative Court (3<sup>rd</sup> instance authority) remains contentious.<sup>40</sup> Since the beginning of Serbian asylum system in 2008, to the date of the submission of this report, 2<sup>nd</sup> and 3<sup>rd</sup> instance authorities have never conducted asylum hearing and have failed to deliver a decision on the credibility of asylum claim. More precisely, Asylum Commission granted Asylum in only 3 cases (2009, 2016 and 2019), while the Administrative Court has never rendered a positive decision.

14. Thus, the findings of the Committee against Torture in terms of the effectiveness of asylum procedure, despite the progress which was detected, are still valid. All three instances lack human, professional and infrastructure capacities and there is no quality assurance assessment. This represents the reason why an average length of an asylum procedure in the period 2019-2021 ranged from 8 to 12 months and in certain instances longer than 1 year.<sup>41</sup> The current state of affairs has led to a situation in which there is a contradicting practice in similar and identical cases, including the cases of unaccompanied and separated children, persons from Iran who converted from Islam to Christianity, asylum seekers from Afghanistan and asylum seekers who have LGBTQI claims.<sup>42</sup>

### III. Effective investigation of crimes of torture and impunity (Article 12 and Article 13)

#### III.1. Criminal Prosecution of perpetrators of torture and ill-treatment

15. Effective prosecution and punishment of state agents accused of torture and other forms of ill-treatment is not guaranteed in the current legal framework based mainly around the Criminal Procedure Code.<sup>43</sup> Even though the Public Prosecutor is entitled to govern pre-investigative and investigative procedure, this body still does not have effective control over the Police. In practice, this means that the police officer would rather follow instructions of his or her superior and not instructions from the Prosecutor. The Prosecutor does not have disciplinary powers and *de facto*, this body does not have an effective control over the Police. For that reason, it is necessary to amend the CPC and to introduce:

1. Judicial police solely responsible to the Public Prosecutor
2. Disciplinary authority of the Public Prosecutor over the Police

16. In the reporting period, authors of this Report were able to obtain the statistical data on the judicial practice in the period January 2018 – June 2020. The statistical data was extracted from the database of the Belgrade Center for Human Rights. In the said period a total of:

- 27 criminal complaints were lodged against 65 state agents for the criminal offence extortion of confession (Article 136 of the CC)

<sup>40</sup> ECRE, 'Country Report: Serbia – 2020 Update,' AIDA, Brussels 2017, available at: <https://bit.ly/2VXwhim>, pp. 47-50.

<sup>41</sup> *Ibid.*, p. 38.

<sup>42</sup> *Ibid.*, pp. 40-45.

<sup>43</sup> *Official Gazette of the Republic of Serbia*, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 and 62/2021.



- (at least) 248 criminal complaints were lodged against at least 476 state agents for the criminal offence torture and ill-treatment (Article 137 of the CC)

17. Out of the total number of criminal complaints (275), at least 205 were dismissed (around 75%) by the competent Public Prosecutor, while the indictment was confirmed in only 12 instances against a total of 23 perpetrators. Additionally, 14 indictments were confirmed in the cases which were initiated before January 2018.

18. The common feature of the vast majority of cases in which the criminal complaint was dismissed as unfounded and which indicate the lack of effectiveness and thoroughness are the following:

- lack of prompt response in relation to alleged perpetrators which implies the risk of collusion among colleagues in the force
- alleged perpetrators are usually not suspended during the course of investigation
- forensic medical examination is rarely applied as an evidentiary activity
- competent public prosecutor usually refers the case to the police, and often to the same police department in which the perpetrators are employed which undermines the principles of independence and impartiality
- not all the witnesses are always questioned on their knowledge of the incident<sup>44</sup>
- not a single case of a police officer providing witness statement against the fellow police officer was recorded

19. Thus, it can be concluded that the vast majority of criminal complaints lodged against police officers, prison staff and other state agents never reaches the indictment phase of the criminal procedure, and thus, is never examined by the competent Court.

20. In the above stated period, a total of 26 procedures in relation to 42 state agents were concluded before the competent courts and the outcomes are the following:

- 2 state agents were sentenced to imprisonment (8 and 5 months respectively)<sup>45</sup>
- 18 state agents were imposed with suspended sentence<sup>46</sup>
- in relation to 5 state agents the procedures were suspended due to expiry of the statute of limitations<sup>47</sup>
- in relation to 1 state agent the Public Prosecutor deviated from criminal persecution
- in relation to 16 state agents competent courts found them not guilty

21. To conclude, the current judicial practice indicates the problem of impunity, which was outlined in the findings of the Human Rights Committee,<sup>48</sup> CPT<sup>49</sup> and the Special Rapporteur on Torture.<sup>50</sup>

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<sup>44</sup> The enlisted deficiencies are further supported by the European Committee for the prevention of torture in its 2018 Report, 'Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017,' 21 June 2018, CPT/Inf (2018) 21, available at: <http://bit.ly/37UxLL8>, paras. 27-32.

<sup>45</sup> Basic Court in Niš, Decision no. 668/16.

<sup>46</sup> BC Šabac, Decision No. 709/15; BC Kragujevac, Decision No. 427/17; BC Subotica, Decision No. 587/17, BC Nis, Decision No. br. 52/18, BC Arandjelovac Decision No. 112/18, Higher Court in Belgrade, Decision No. 378/18; III BC Belgrade, Decision No. 510/18; BC Uzice Decision No. 18/19; BC Pirot, Decision No. 138/19, and BC Pozarevac, Decision No. SPK. 11/19 and K. br. 71/20/

<sup>47</sup> II BC Belgrade, Decision No. 1624/19; III BC Belgrade, Decision Nos. 556/15 and 231/18, and BC Vranje, Decision No. 551/17.

<sup>48</sup> Human Rights Committee, 'Concluding observations on the third periodic report of Serbia \*', 10 April 2017, CCPR/C/SRB/CO/3, available at: <https://bit.ly/3eJJGRx>, para. 27.

<sup>49</sup> CPT, 'Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017,' 21 June 2018, CPT/Inf (2018) 21, available at: <http://bit.ly/37UxLL8>, paras. 17.

<sup>50</sup> Human Rights Council, 'Visit to Serbia and Kosovo\* Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment\*\*', available at: <http://bit.ly/2P5PIU1>, paras. 24, 28 and 96.



## III.2. Medical examination as the safeguard against torture and ill-treatment

22. Documenting injuries and other traces of torture and ill-treatment by medical professionals still represents a serious issue in the Republic of Serbia. The problem implies that doctors in civil institutions, but also doctors providing medical assistance in detention on remand still fail to document traces of ill-treatment in a manner envisaged in the Istanbul Protocol and standards of the CPT – the victims statement, detailed description of injuries and final assessment on the correlation between the first two. There are two layers of this problem:

- medical workers in civil institutions still lack the knowledge on documenting injuries in line with the torture prevention standards. Moreover, the practice has shown that instances in which medical workers who examine alleged victims of ill-treatment usually do not inform the competent Public Prosecutor Office when they receive arguable claim on ill-treatment
- the practice in prisons and especially pre-trial detention has slightly improved, but referral mechanism towards competent Public Prosecutor is still not applied. Thus, the records on injuries of persons imposed with the pre-trial detention are more or less in line with torture prevention standards, but the findings in these records are not referred to relevant judicial authorities.<sup>51</sup>

23. In the reporting period, Serbia has failed to establish independent complaint mechanism as recommended by the CPT<sup>52</sup> and in line with its 5 principles – availability, accessibility, confidentiality/safety, effectiveness and traceability.<sup>53</sup>

## III.3. July 2020 Protests in Belgrade

24. On 7 July 2020, the President of the Republic of Serbia Aleksandar Vucic announced restrictions aimed at curbing the transmission of COVID-19. The announced restrictions implied a ban on all public gatherings in the capital city of Belgrade (effective as of 8 July 2020) and a weekend curfew preventing Belgrade residents from leaving their homes (effective between 10 and 13 July - Friday to Monday).<sup>54</sup> Soon after President Vucic's announcement, a number of citizens gathered in front of the Parliament to protest and express their dissatisfaction with the work of the Government and its way of managing the COVID-19 pandemic.<sup>55</sup> Since then, the protests take place every day. On the night of 7 July 2020, around 11 p.m., a group of right-wing activists broke into the hallway of the National Assembly. In the following hours, severe clashes between police and the protestants have ensued. The police used tear gas, police batons, police horses and dogs and the clashes spread all over the streets of Belgrade, while the most radical protestors used stones, bricks, torches and other pyrotechnical equipment. On 10 July the clashes and violence, accompanied by police ill-treatment repeated.

25. Even though a number of footages from the spot clearly show police officers, in riot gear, brutally beating people with batons, knocking citizens to the ground and kicking them with boots on their heads and all over their bodies, public officials (the President of the Republic of Serbia,<sup>56</sup> the Prime

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<sup>51</sup> CPT, 'Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017,' 21 June 2018, CPT/Inf (2018) 21, available at: <http://bit.ly/37UxLL8>, paras. 10, 12, 23 and 26.

<sup>52</sup> CPT, 'Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017,' 21 June 2018, CPT/Inf (2018) 21, available at: <http://bit.ly/37UxLL8>, paras. 18-23.

<sup>53</sup> CPT, *Complaints mechanisms - Extract from the 27th General Report of the CPT, published in 2018*, CPT/Inf (2018)4-part, available at: <https://bit.ly/3AhTqTo>.

<sup>54</sup> N1, *Vucic declares weekend curfew in Serbian capital*, 7 July 2020, available at: <https://bit.ly/3eqXRYB>.

<sup>55</sup> US News, *Demonstrators Storm Serbian Parliament in Protest Over Lockdown*, 7 July 2020, available at: <https://bit.ly/3gPP3Ng>.

<sup>56</sup> Sputnik Srbija, *Nasilnici će biti poraženi i pohapšeni: Vučić o protestima u Srbiji*, 10 July 2020, available at: <https://bit.ly/2DxafJv>.



Minister,<sup>57</sup> the Minister of Interior<sup>58</sup> and the Director of the Police<sup>59</sup>) claim that there was no excessive use of force. Contrary to the official statements, the EU officials<sup>60</sup> and diplomats<sup>61</sup> in Belgrade and the foreign press and NGOs condemned the violence and violations of human rights and freedoms of expression and assembly. Another fact that gives serious reasons for concern was the statement of the Ombudsman's Office which highlights that there was no excessive use of force by the police, but only individual cases. The Ombudsman highlighted that his mobile teams were present on the streets and that they haven't noticed an obvious wide-spread violence.<sup>62</sup>

26. A total of 41 criminal complaints were lodged against almost 100 police officers in the coming days, and only by the Belgrade Center for Human Rights and A11-Initiative for Economic, Social and Cultural Rights. The major flaws identified in relation to these incidents are the following:

- Forwarding of criminal reports and evidence of ill-treatment (witness statements, medical documentation, video footage, proposed evidence, etc.) to the police units where the implicated officers work before taking any action in response to the criminal reports (questioning of the suspects, collection of evidence) – facilitating collusion of the suspect police officers and their co-workers;
- Written communication between the Belgrade First PPO and the ICS during the investigations via the Belgrade police – compromising the confidentiality of the investigations;
- Written communication between the Protector of Citizens and the ICS during the investigations via the Police Minister's Office and the MIA Secretariat – compromising the confidentiality of the proceedings before the Ombudsman;
- Delays in taking statements from police officers – more than two months after the incidents;
- Delays in taking statements from victims – more than seven months after the incidents – some victims have not even been summoned yet;
- Failure to order forensic expert reports on the injuries and medical documentation;
- Delays in collecting the video footage of cameras that may have recorded police brutality and failure to check MIA claims that some of its surveillance cameras on Belgrade streets were not operational;
- Failure to organise identification parades in cases where the victims said they might be able to recognise the officers who had ill-treated them, who were not wearing visors or masks during the incidents;
- Failure to penalise police officers who obviously made false statements during the preliminary investigation proceedings and produced identical (copy-paste) reports on the use of force;
- Failure to take statements from all officers involved in the incidents and to question their superiors' assessments that their use of force had been legal.<sup>63</sup>

#### IV. Redress (Article 14 of the Convention)

27. Article 14 of UNCAT provides victims of torture and ill-treatment the right to rehabilitation, which encompasses the States' obligation to ensure that specialized rehabilitation services are available, appropriate and promptly accessible to all victims without discrimination, and as stated in General comment No. 3 (2012) of the Convention.

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<sup>57</sup> Pink, "Demonstracije i okupljanja su u potpunosti neodgovorno ponašanje"! Brnabić za Pink: Za proteste uvek ima vremena, za borbu protiv koronavirusa ga više nema!, 12 July 2020, available at: <https://bit.ly/2We3zXv>.

<sup>58</sup> Insajder, Stefanović Policija bila suzdržana, počela da interveniše tek kada im je život bio u opasnosti, 8 July 2020, available at: <https://bit.ly/2Ojvpx9>.

<sup>59</sup> Danas, Rebić: Nije bilo prekomerne upotrebe sile, suzavca ispaljeno koliko treba, 8 July 2020, available at: <https://bit.ly/2WfNXt7>.

<sup>60</sup> N1, Fajon: Snimci iz Srbije brutalni - zdravlje na prvom mestu, ali ne s represijom, 9 July 2020, available at: <https://bit.ly/3fpHzQU>.

<sup>61</sup> Danas, Ambasada SAD osudila svaku vrstu nasilja na protestima u Srbiji, 9 July 2020, available at: <https://bit.ly/2C3RlcQ>.

<sup>62</sup> Zaštitnik građana, Policija nije koristila prekomernu silu, pojedinačni slučajevi biće ispitani, 9 July 2020, available at: <https://bit.ly/2BWO3s9>.

<sup>63</sup> See more in, BCHR, 'Investigations of cases of police brutality during the July 2020 civic protests', July 2021, available at: <https://bit.ly/2YyikZj>.



28. During the last decade of the twentieth century Serbia was faced with influx of refugees fleeing from armed conflicts in former Yugoslavia (Croatia, Bosnia and Herzegovina, Kosovo\*). The exact number of refugees and IDPs from that period is unknown, but it is estimated that there were about 500,000. Important characteristic of wars in Croatia and Bosnia and Herzegovina was existence of a large number of prison camps or places of detention. It is very difficult to obtain reliable estimates of the number of imprisoned and tortured, since reports vary in numbers in relation to the source. Report from International Committee of the Red Cross (ICRC) mentions „over 44,000 detainees, both combatants captured during the fighting and civilians arrested because of their ethnic origin“, that were registered by names by the ICRC during nearly five years of conflict. Same source stated that „the belligerents [i.e. all sides in conflict] set up more than 500 places of detention“.<sup>64</sup>

29. During the war time in former Yugoslavia the Serbian government forcibly mobilized tens of thousands of refugees and citizens of Serbia and sent them to the battlefields in Croatia and BiH. They were taken from trams, buses, cafes, the streets, student dormitories, and sent to combat. The most intensive forcible mobilization took place in the summer of 1995. After the Croatian military action “Storm”, hundreds of thousands of ethnic Serbs that were exiled from Croatia tried to find refuge in Serbia. Instead of shelter and refuge they were faced with massive forcible mobilization. Many of them were first sent to paramilitary “training camps” of the Serbian Voluntary Guard in Erdut or in Manjaca, held by Serbian paramilitary forces where they were brutally tortured. Subsequently, they were sent to the battlefield in BiH, where the war was still raging. Many of them were captured by the enemy army and spent months in detention camps. It is estimated that during that summer around 10,000 refugees were forcibly mobilized.

30. Recently, Serbia faced with the second large wave of refugees that started with conflicts in the Middle East – Iraq, Syria and Afghanistan, with its peak in 2015. Hundreds of thousands of refugees were passing through Serbia. Serbia was part of the so-called “Balkan route” which was used by refugees to reach wealthier countries of Europe, and at the beginning of the crisis refugees were just passing through the country. The number of victims of torture among these groups of refugees/migrants/asylum seekers is also unknown. There is no special treatment in asylum procedure for those who survived torture in the country of origin or in transit countries. Refugees/migrants/asylum seekers are accommodated in Reception and Asylum Centers. According to IAN, violence is present very often in larger centers. IAN received complaints from beneficiaries in the Asylum Center in Bogovađa, where under aged refugees and migrants are accommodated that they have been robbed, beaten by other beneficiaries, and by authorities in the camp. In 2018, IAN provided forensic examination of a beneficiary accommodated in the Reception Center in Obrenovac, who was beaten by the staff member of the Commissariat for Refugees and Migration.

31. It is well known that torture survivors are group at the highest risk of developing mental disorders among all refugees. The experience of torture is one of the most traumatic experiences. The consequences of torture are multiple and can be long lasting especially if they are not treated in time. We are witnessing that victim of torture from the war in former Yugoslavia still have serious mental health problems related to experience of torture. Forcible mobilized refugees from the past are not recognized as victims of torture and didn't receive systematic compensation for the torture they survived. They didn't even get official apology from the Government for the suffering they inflicted on them. Although torture victims in Serbia have a right to access health care as any other Serbian citizen, they are not recognized as a special group that needs specialized services. If a person who has survived torture asks for medical examination by a specialist in public health institution, it may happen that the person has to wait for a few months. In the mental health centers torture victim can receive psychiatric examination and medicines, but free-of-charge psychotherapy is generally not available due to the large number of patients and the insufficient number of therapists. Professionals (psychiatrist, psychologist) that work in public mental health institutions are not sensitive enough and educated enough for identification and for provision of treatment to torture victims. Public services are more focused on diagnostics than treatment and lack the holistic nature, which is often needed to ensure appropriate rehabilitation. Finally, neither free-of-charge legal assistance nor forensic examinations are available to torture victims. Medical doctors do not have enough knowledge to identify torture victims and to write appropriate medical-legal report. This makes prompt identification of victims difficult.

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<sup>64</sup> V Jovic, 2021, *Refugees, torture, and dehumanization*.



32. Governmental bodies such as Ministry of Health, Ministry of Justice, Ministry of Labor, Employment, Veteran and Social Policy, and the Ministry for Human and Minority Rights do not have sufficient capacity and knowledge related to delivery of reparation and rehabilitation for torture victims. This includes identification of torture victims according to the Istanbul Protocol; interdisciplinary and holistic approaches to rehabilitation of victims of torture; confidentiality; and secondary traumatization.

33. In order to fully ensure an effective access to redress, Serbia should:

1. Fully implement the right to rehabilitation for victims of torture and ill-treatment including by ensuring that specialized rehabilitation services are available, appropriate and promptly accessible without discrimination. This can either be accomplished by building the necessary capacity and expertise within the public health system or by engaging non-State service providers such as specialized non-governmental organizations.
2. Provide trainings to medical staff, staff in office for asylum in proper identification of torture victims according to the Istanbul Protocol.
3. Conduct full investigations of all claims of torture and ill-treatment in relation to forcible mobilization; recognize forcibly mobilized persons as victims of torture and make a public apology for the torture they have suffered.
4. Establish a system of proper identification of victims of torture and ill-treatment (among refugees/migrants/asylum seekers, in so called closed institutions, etc), in order to enable proper and prompt comprehensive rehabilitation services and establish a unique data base on the number of victims of torture and ill-treatment in Serbia that will include all victims, war torture victims, forcibly mobilized refugees, torture victims among refugees/migrants/asylum seekers.

#### **IV.1. IAN's case story No. 1**

R.B., 55 years, was forcibly mobilized in August 1995, during the war in former Yugoslavia. He was taken first to Sremska Mitrovica (town in Serbia) where they were put on buses and driven to paramilitary camp in Erdut (town in Croatia which was under jurisdiction of Serbian authorities). He did not know what was going on, who were the people who captured them, what army was in question. When they arrived in Erdut and got off the bus, torture began. Beating with sticks, swearing, maltreatment, psychological abuse, they called them cowards, traitors... At the admission, a man in charge (who is still part of the ruling party), took his necklace, bracelet and some money he had (around 10 EUR) and said he would give them back. Of course, that never happened. He witnessed horrible things – beating and maltreatment of old and sick people, a guy with epileptic seizure who was beaten instead of being helped etc. They had to bear a stone of 20-30 kg, run with it and shout “I love this stone”, if someone fell, the punishment was brutal. After several weeks he was sent to battlefield in Croatia. During the transfer, they were verbally humiliated, and he was beaten just because he smiled. Apart from members of paramilitary forces, officials of Yugoslavian Army were also involved in torture and ill-treatment. When he came home, the first 4-5 months were hard. He went through the hard things and situations over and over again. It was not the beating that was hard for him, it was shaving his hair, humiliation, maltreatment. As he is getting older, everything is even harder. He never talked to anyone about what he survived. He thought psychiatrist would not understand. Two years ago, he contacted our organization. He had to talk to someone and found IAN as the only specialized center for rehabilitation of torture survivors. He received no rehabilitation, nor compensation from the State. But the only thing that he wants to get from the State (as the same people who did those things 26 years ago are still in the Government) is an apology. Apology to all people who were captured and tortured and according to him it was around 15 000 to 20 000 people.

#### **IV.2. IAN's case story No. 2**

M.V. is from one African country. He fled to Serbia in December 2020 together with his brothers and their families. They all applied for asylum in Serbia immediately and settled in Center for Asylum in Belgrade. Very soon after arrival, he came in IAN looking for psychological and psychiatric assistance. He found out about our center from his lawyer that represents him in the asylum process. M.V. was imprisoned in his country of origin, because he was member of national minority and activist for the human rights. His mother and younger system were brutally raped by the police while he was not at home. They are in refugee camp in neighboring country. His older sister was kidnapped and probably killed. He was 5 days in prison where he was brutally tortured. He was raped several times, beaten every day, forced to drink and eat urine and feces. When he was released, he hid at relative's house and after a couple of days he left his country. M.V. has serious mental health problems. He has nightmares, he is depressed, has panic attacks, he is very anxious and very frightened. He has chronic severe posttraumatic stress disorder. He also has very strong somatic symptoms. While he was settled in Center for asylum, he had basic



health assistance but other services were not easy to assess. After couple of months, he left the camp, and rent an apartment with the help of IAN. He managed to find a job. He is still waiting for the decision on his asylum status. He has no help in integration process from the State, no social assistance, and he doesn't speak Serbian language. Severe emotional problems make that process more difficult to do it on his own. Within IAN M.V. receives medical, psychological, psychiatry and social assistance. IANs volunteers teach him Serbian. Without CSOs assistance he would be on his own. State doesn't recognize M.V. as victim of torture and doesn't recognize his vulnerability and need for holistic rehabilitation care.

## V. Victims of Human Trafficking

34. After going through the abuse and torture, victims of trafficking in human beings in Serbia are facing one more frightening hurdle, in the form of a complex, often slow and non-responsive system, starting from the identification, support, trial to the successful social integration. The examples stated in this Report are extreme, therefore, more visible and easier than others. There are also excellent examples of state institutions response and support to the victims, again not so common. What is concerning is that in between these extremes, there is a multitude of procedures, actions and established practice that fall far beyond the minimum standards when it comes to treatment of victims, but are difficult to spot and tackle because they are so common and widely accepted. In the meantime, the victims of trafficking in human beings who already suffered their share, and decided to enter the court procedure, get trapped in a completely new form of constant threats of being abused and mistreated, this time, by the system itself.

### V.1. Gender dimension of trafficking in human beings

35. **Around 52% of women still have at least 10 symptoms of mental health disorders even after 90 days from the abuse** and exploitation in the human trafficking chain.<sup>65</sup> According to the research of the survivors' experiences, **the symptoms corresponded to the intensity of the symptoms of torture**. Physical symptoms of experienced trauma are exhaustion, weight loss or overweight, sleep disorders (insomnia or prolonged sleep), gastrointestinal problems, immune system disorders, dermatology problems, diabetes, genital-venereology, neurological, sensory problems of hearing and vision, etc. When there are more physically expressed symptoms, they further condition and aggravate the emotional state of the victims. Representatives of different institutions first deal with the physical symptoms when contacting the victims.

36. Although there have been some changes in the forms and shapes of human trafficking, gender-based violence is still present in the majority of formally identified cases. The latest statistics for Serbia (2020) shows that, out of the total number of formally identified victims (57), almost two-thirds are women - 65% (37). Among female victims, 49% are girls. The statistic for previous years is not much different. In 2019, out of the total number of formally identified victims (39), 82% were women (32). Among female victims, 59% were girls.<sup>66</sup>

### V.2. Treatment of victims of trafficking<sup>67</sup>

37. The protection of the victim's privacy, the right to assistance, counseling, information and the safety of the victim in court proceedings should be improved. Serbian statistics shows that the number of victims of human trafficking, especially children, is high.

38. ASTRAs annual analysis of the court verdicts for trafficking in human beings and similar crimes, points out that status of a particularly sensitive witness is granted in a small number of cases. In 2019, only 6 injured parties received the status of a particularly sensitive witness, out of the total number of injured persons (37), of which 2 were minors.

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<sup>65</sup> United Nations Office on Drugs and Crime, 'Anti-human trafficking manual for criminal justice practitioners, Module 3: Psychological reactions of victims of trafficking in persons (2009)', available at: <https://www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html>.

<sup>66</sup> Information provided from ASTRA's database.

<sup>67</sup> All the data is compiled from ASTRA's work with the victims of human trafficking.



39. The situation for 2020 is even more unfavorable because none of the verdicts (22 first instance verdicts) that were analyzed contain data on granting the status of a particularly sensitive witness. The conclusion is that there is still a lack of understanding of the position of victims and neglect of their rights and interests by the authorities. The provisions relating to the questioning of victims without the presence of defendants and under special conditions are still not applied consistently.

40. For 2019, only 12 out of a total of 37 injured parties had a proxy in the procedure (out of that number, 5 minor injured persons out of a total of 14). The Center for Social Work and the Center for Protection of Victims of Trafficking in Human Beings participated in the cases of 15 injured parties from the verdicts, both through reports on victims used in the proceedings or through the presence of the Center for Social Work during the hearings.

41. For 2020, data from the analyzed verdicts, in only 3 cases (of which 2 injured parties are minors) in the verdicts there is data on the proxy (23%), while for the other 10 injured parties (77%) there is no data. The Center for Social Work, which was in charge, was involved in all proceedings related to injured parties that were minors, and the Center for the Protection of Victims of Trafficking in Human Beings participated in 2 cases.

### V.3. Worrying trends in re-qualification of acts<sup>68</sup>

42. One of the important aspects is the monitoring of verdicts that include a **plea agreement**. For 2019, 50% of the analyzed first instance verdicts were passed by accepting the agreement on the recognition of a criminal offense, and in 87% of cases they refer to the criminal offense of facilitation of prostitution. In 2020, out of 22 first instance verdicts, 13 verdicts were passed by accepting the plea agreement, i.e. **59%** of the total number of first instance verdicts. The weight of economy, efficient and fast resolution of criminal proceedings with lower costs, is obviously prioritized over the rights of the injured parties.

### V.4. Omissions in implementation of the international standards<sup>69</sup>

43. As stated above certain legal provisions are harmonized with international documents, but there is no consistent application, while on the other hand there are provisions that are not in line with international standards. One of the areas in which the legal provisions have been changed is regarding the institute of a plea agreement. The changes that have been made led to the rights of injured parties being greatly limited. Rights related to participation in the procedure itself, the influence on the adoption of the agreement, the content of the agreement and the possibility to challenge the agreement by an appeal.

44. The analysis for 2019 shows that the decision on property claim is contained in only 7 first instance verdicts, and all injured parties in these proceedings were referred to litigation in order to realize the property claim (17 injured parties out of the total number of 37 injured parties). When it comes to property claims, data for 2020 show that out of a total of 13 injured parties, only 2 were damaged for the purpose of realizing a property claim sent to litigation, 1 injured party was awarded a prominent property claim in criminal proceedings, while for the remaining 10 injured there is no data in the first instance verdicts.

### V.5. Cases from the practice

#### V.5.1. Constitutional Court decision

45. In March 2021, a historic decision<sup>70</sup> was issued by the Constitutional Court of Serbia. ASTRA's female client, sexually exploited as a minor, appealed against a Ruling of the Higher Court in Belgrade and received a positive decision, which is important not only in this particular case but for all similar cases in the future. The Constitutional Court considers that in the specific case the competent

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<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> The Decision number: 1526-2017 published in the Republic of Serbia Official Gazette on April 06, 2021.



state bodies - the Higher Public Prosecutor's Office in Belgrade and the Higher Court in Belgrade **have not fulfilled their positive obligations** in the procedural aspect in relation to the prohibition of all forms of trafficking guaranteed by the Constitution, and **failed to conduct an effective and fair procedure**, which would result in the issuance of a relevant court judgment. In more than 30 pages, the Court elaborated the rationale behind the decision that ASTRA's client's right to a ban on trafficking in human beings<sup>71</sup> has been violated, as well as the right to a trial within a reasonable time<sup>72</sup>.

The Constitutional Court considers that, in the present case, no amount of money can compensate for the human rights violations suffered by the Complainant. The court determined the right of the Complainant to compensation for non-pecuniary damage in the total amount of EUR 5,800.

### V.5.2. Misdemeanor Courts' practice

46. **Analysis of court verdicts in 2020** - The Misdemeanor Court convicted the defendant (fine) for the misdemeanor of prostitution under Article 16 of the Law on Public Order and Peace. The Basic Public Prosecutor's Office submitted a request for initiating a misdemeanor procedure and charged the defendant with the misdemeanor committed under Article 16 of the Law on Public Order and Peace. In her defense, the defendant stated that she came to the apartment where she was found at the invitation of the woman with whom she had come into contact a few months before. She invited them to agree on a job, she accepted the invitation because she did not have the financial resources. After that, the woman asked her if she wanted to engage in prostitution for her. Defendant accepted the offer in the absence of choice. She accepted many of the clients brought to her, out of fear. The woman (perpetrator) had hysteria attacks, yelled at the defendant, determined how long she should be in the apartment and provide services, etc. The defendant in the procedure did not dispute that she was engaged in prostitution, but **she asked the court to take into account** her difficult financial situation, the fact that she was deceived by the mentioned woman, as well as that she regrets what she did and will not do it again in the future. She is a single mother of a 12-year-old child. The defendant admitted the misdemeanor, and **the court did not consider other evidence** proposed by the Applicant - the examination of witnesses, as this would have unnecessarily delayed the proceedings.

47. The court assessed the defense of the defendant in the part that refers to her difficult financial situation, which, by the conclusion of the court, does not release her from responsibility. The acting judge, without taking into account the circumstances of the case and the defendant's defense, decided that the principle of economy and faster resolution of the proceedings prevail over the fact that the woman was a single mother of a 12-year-old child, in a difficult position, recruited by an aggressive woman who limited her freedom of movement and choice (she accepted many clients out of fear) and took advantage of her difficult financial situation.

### V.5.3. Astra id 2238 – when abuse continues outside the trafficking chain

48. After the end of the hearing regarding the case against several persons for the act of human trafficking, the witness-injured party came out visibly shaken. Her face changed color, her whole body trembled with fear and muffled crying. The words of support from the lawyer and consultant who followed the trial encouraged her to start from an internal spasm and "allow" herself to cry loudly and express the hurt, anger and feeling of horror that overwhelmed her.

49. When she regained consciousness, she said that two things affected her a lot. The first is that **one of the defendants was only half a meter away from her** and she had the feeling that while she was giving the statement she was breathing down her neck and that she could get up and attack her at any moment. The second was when **the judge laughed on her account**, making a joke out of his own question and deeply hurt her. Namely, the judge asked her directly to specify where the abortion intervention was performed, (she got pregnant during the exploitation). When she answered the question and specified the address, the judge continued with further questioning her to describe the staff present at the time, which she did, he rudely interrupted her with the comment that he was just checking if his colleague, the secretary, who lives near the clinic, maybe assisted the doctor part-time. After his own joke, he started laughing. Also, the defendant's defense counsel asked, and the judge

<sup>71</sup> Guaranteed by Article 26, paragraph 2 of the Constitution of the Republic of Serbia

<sup>72</sup> Guaranteed by Article 32 of the Constitution of the Republic of Serbia



allowed the question, asking the victim to demonstrate how to perform pole dance, in order to “check if she was lying that she had to do that as well”.

#### **V.5.4. Astra ID 2588 – False promises from the system causing more stress, revictimisation and abuse**

50. One more illustrative example is the case of ASTRA's client who was exposed to brutal violence as a victim of human trafficking and suffered from post-traumatic stress disorder as the most pronounced consequence of torture. He felt intense fear for himself and his family, which is why his representative sought the status of a particularly sensitive witness and suggested that the testimony is given via video link. The judge accepted the request and granted the status of a particularly sensitive witness and adjourned the hearing.

51. It was a great relief for the victim, he was calmer and more optimistic about giving testimony. A month later, the client went to court with his representative, psychotherapist and consultant from ASTRA. However, at the spot, the judge said that it was not possible to organize the implementation of the status of a particularly sensitive witness and for him to testify via video link. The justification was that this had never been done before and that he did not know if it could be done in the court building due to technical reasons. The client ended up being very upset, he had a panic attack as he met the defendants who were addressing him while passing by. He felt that the system had let him down.

## **VI. Domestic and Gender Based Violence**

52. Even though the Law on Prevention of Domestic Violence<sup>73</sup> (2016) has been adopted and a large number of urgent measures have been imposed by police officers, criminal prosecution of perpetrators of domestic violence still remains a problem. The Public Prosecutor's Office rejects a large number of criminal complaints, and the injured parties only receive a notification, without an explanation as to why their criminal complaint was rejected.

53. According to the data of the Statistical Office of the Republic of Serbia, 5932 cases of domestic violence were reported during 2020. Total of 2337 perpetrators of the crime of domestic violence were convicted during 2020, of which 669 were sentenced to prison, 1508 perpetrators received suspended sentence, 138 were sentenced to house arrest and 6 of them to fines.<sup>74</sup> Due to a significant disparity between filed criminal complaints and convicted perpetrators (over half) and the small number of imposed prison sentences, a large number of women in Serbia still don't feel protected from domestic violence.

54. According to the Ministry of the Interior, the number of cases of domestic violence decreased during the state of emergency due to the COVID-19 epidemic in 2020, although it was fully expected that that number would increase due to the very restrictive movement ban in force in Serbia. When regulating the measure of mandatory isolation at home, the Ministry of Health did not consider whether a person is a convicted perpetrator or a victim of domestic violence. This information was not considered, nor was an alternative accommodation considered for victims or perpetrators of domestic violence who were imposed with mandatory isolation at home.

55. During the COVID-19 epidemic, courts and public prosecutors acted only in emergencies. Cases of domestic violence were classified as such, although their number significantly decreased. According to the analysis conducted by the OSCE, Work of courts during the COVID - 19 epidemic<sup>75</sup> a very large disparity in the number of cases of domestic violence initiated by the four largest public prosecutor's offices in Serbia during and after the state of emergency was noted: If we compare the data related to the criminal offense of domestic violence in terms of the number of proceedings and motions for detention, we get the data that out of 122 proceedings for domestic violence conducted

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<sup>73</sup> *Official Gazette of the Republic of Serbia*, No. 94/2016)

<sup>74</sup> See: Adult perpetrators of criminal offences, 2020, Statistical Office of the Republic of Serbia, available at: <https://publikacije.stat.gov.rs/G2021/PdfE/G20211195.pdf>.

<sup>75</sup> See: Work of courts during the COVID - 19 epidemic – analysis and recommendations, OSCE, 2021, available in Serbian only at: <https://www.osce.org/mission-to-serbia/484160>



during the state of emergency, 22 motions for detention were filed. In the period from May 6 to September 15, the total number of proceedings for the crime of domestic violence was 494, and the number of motions for detention was 83 ".<sup>76</sup>

56. Lawyers' Committee for Human Rights- YUCOM has conducted a study on the availability of free legal aid to women victims of violence, since Serbia passed the Law on Free Legal Aid<sup>77</sup> in 2018, which came into force on October 1, 2019, and that this law guarantees the right to free legal aid to those seeking protection from domestic violence. Data obtained showed that only 162 requests for free legal aid were submitted in 2020 on this basis, in 31 local self-government units. As many as 61 municipalities answered that they did not have requests for free legal aid based on protection from domestic violence. This data tell us about the very poor awareness of women that they are entitled to free legal aid and the fact that there is a lack of adequate country wide campaign to inform women about their rights.

57. The Law on Free Legal Aid does not recognize other forms of violence against women other than protection from domestic violence, as special conditions for free legal aid. All other victims of gender-based violence must prove that they cannot afford a lawyer. Thus, if, for example, a rape victim wanted to exercise the right to legal aid, she would have to prove in administrative proceedings that she meets the property requirements for granting the right to free legal aid and fill out an extremely complicated and incomprehensible form at the local self-government units which makes this kind of aid considerably meaningless. During 2020, local governments did not approve any requests for free legal aid to victims of sexual offenses. This data also indicates the poor awareness of the victims themselves regarding this right, but also the inadequate legal conditions for granting free legal aid to victims of gender-based violence.

58. When it comes to sexual offenses, the Serbian public was very upset in 2021, when a member of an opposition political party revealed to the public that the Mayor of Jagodina, a small town in Central Serbia, organized prostitution of minors in Jagodina.<sup>78</sup> The public testimony of one of the participants in the organized parties where, according to the witnesses minors were pimped, also contributed to the public disquiet. The President of the Republic openly sided with Dragan Markovic, the mayor of Jagodina, and the suspect received a lot of space in the pro-regime media. In some of his public appearances the suspect even openly threatened witnesses saying: „If the victims are afraid of me and don't want to go to the prosecutors' office and police, but want (to testify) via Skype, I'll find out their names nevertheless, as well as of those witnesses. Do you understand?“<sup>79</sup> This was said in a show on a TV channel with a national frequency.

59. After all these events and several months of the investigation procedure, the Higher Public Prosecutor's Office in Kraljevo announced that it has determined that, for now, there are no grounds for suspicion and evidence for initiating criminal proceedings, due to the alleged pimping of women in Jagodina. Dragan Markovic is known in Serbia as the President of the Party of Serbian Unity, which has been participating in the government in Serbia since 2007 - at all levels, both local and national.

## **VII. Protection of human rights defenders, journalists, LGBTQI population and national minorities**

60. The recommendation from the Concluding observations on the second periodic report on Serbia regarding the protection of rights of human rights defenders, journalists, LGBTI population, and national minorities called for the state to publicly condemn threats and attacks and refrain from supporting them, through action or omission. In the Third periodic report<sup>80</sup>, the state listed several activities it undertook to fulfil this recommendation, acknowledging that no specific actions were taken concerning the safety of human rights defenders.

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<sup>76</sup> Ibid. pg. 21

<sup>77</sup> *Official Gazette of the Republic of Serbia*, No. 87/2018)

<sup>78</sup> See: <https://balkaninsight.com/2021/04/20/veteran-serbian-politician-faces-sexual-exploitation-investigation/>

<sup>79</sup> See: <https://bit.ly/3afFsOu>.

<sup>80</sup> Third periodic report submitted by Serbia under article 19 of the Convention, due in 2019\*, \*\*, Republic of Serbia, 2019, available at: [shorturl.at/vGHR4](https://shorturl.at/vGHR4)



61. Despite this glaring omission, it is worth bearing in mind that even journalists who were the focus of the supposed state's efforts are still regularly targeted with smear campaigns and hate speech from government-sponsored tabloids and highest government officials.<sup>81</sup> Serious accusations regularly levied against investigative journalist of threatening the safety of the president of Serbia and members of his family have created an atmosphere in which physical safety becomes a genuine concern for anyone voicing a dissenting opinion, including human rights defenders.

62. Since the beginning of 2020, the Lawyers' Committee for Human Rights (YUCOM) has been registering attacks and pressure against human rights defenders in Serbia.<sup>82</sup> So far, we have noted 147 incidents<sup>83</sup>, of which 31 were physical attacks. Ten attacks involved beatings, violence, and injuries, and eight involved threats, intimidation, and blackmail.

63. This number could be higher as many attacks against HRDs go unreported due to the fear of reprisals against the victims or their family and/or a lack of trust in police and judiciary. YUCOM's data shows that only 27% of incidents registered happened outside the capital Belgrade. Many local activists who may be targets of such attacks belong to informal groups and don't identify as HRDs. They are sceptical of large Belgrade-based CSOs, often labelled as foreign agents by the media, which could explain the smaller number of attacks recorded outside of Belgrade. In their Report, the state simply acknowledges it does not keep records of attacks against HRDs, failing to comment whether it would begin to do so in the future. Gathering statistical data on attacks against HRDs, initiated criminal procedures and convictions is a requirement for improving their safety and fulfilling numerous UN recommendations.

64. Human rights defenders in Serbia, the most frequent targets of physical attacks, were activists defending the Right to Home.<sup>84</sup> Other groups at risk include activists challenging human rights restrictions during COVID-19, environmental activists and peace activists. The most significant attack against HRDs in Serbia in 2020 was the abuse of anti-terrorism legislation by the government, labelling numerous renowned HRDs as suspects for money laundering and terrorism.<sup>85</sup> Along with smear campaigns, one of the most common mechanisms used to curb the work of HRDs was the abuse of different legal procedures against them.

## VIII. Position of Persons with Mental Disability in the Republic of Serbia

65. Although the Serbian government has taken some steps to refine the legal framework and improve the position of persons with mental disability, essentially nothing has changed. Real progress has been lacking and a far greater efforts must be made to meet basic human rights standards.

66. Children under the age of 3 are still admitted to residential institutions, mechanisms to prevent gender-based violence against women with mental disability are still not developed, and people are still being deprived of legal capacity. The lack of adequate services in the community, remains one of the main obstacles for deinstitutionalization as well as for the prevention of institutionalization. A large number of people still live in residential institutions. According to data received from the Republic Institute for Social Protection, the total number of adults and children accommodated in residential institutions across Serbia in 2019 is 5775. With the outbreak of the COVID-19 pandemic, position of both persons living in residential institutions and in community, only further deteriorated.

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<sup>81</sup> See: INTENSIFYING ATTACKS AND CALLS FOR VIOLENCE AGAINST CSOS AND JOURNALISTS BY THE SERBIAN GOVERNMENT, CIVICUS, March 23, 2021, available at: <https://monitor.civicus.org/updates/2021/03/23/intensifying-attacks-and-calls-violence-against-csos-and-journalists-serbian-government/>

<sup>82</sup> See: Report on Attacks on Human Rights Defenders in Serbia for 2020, YUCOM, 2021, available at: <https://en.yucom.org.rs/wp-content/uploads/2021/04/Report-on-the-attacks.pdf>

<sup>83</sup> To avoid overlapping with an already existing database of attacks against journalist maintained by IJAS (Independent journalist association of Serbia) we only record such attacks if journalists were attacked due to their role of as HRDs.

<sup>84</sup> See: Arrests, fines, beatings: Joint Action Roof Over Your Head – a thorn in whose side?, available at: <https://www.masina.rs/eng/arrests-fines-beatings-joint-action-roof-over-your-head-a-thorn-in-whose-side/>

<sup>85</sup> See: Serbia's anti-terrorism laws being misused to target and curb work of NGOs, UN human rights experts warn, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26492&LangID=E>



## VIII.1. Deprivation of legal capacity

67. The Republic of Serbia has not done anything to abolish the deprivation of legal capacity to date. Legal provisions depriving persons of legal capacity on the basis of disability, are still in force. People are being deprived totally or partially, and widely used extension of parental right produces the same effects as the total deprivation.

68. According to the research conducted among Centers for social work by MDRI-S in 2018<sup>86</sup>, and on the basis of data received from 110 municipalities in Serbia, 10442 people are totally deprived of their legal capacity, 928 people are partially deprived while parental right has been extended for over 629 people.

69. The increasing practice of temporary guardianship has led to more than 10,000 people under this form of guardianship<sup>87</sup>. The institute of temporary guardianship is often used by centers for social work in cases when a person should be accommodated in a residential institution, which is then considered voluntary on the basis of the consent of the temporary guardian<sup>88</sup>.

70. Amendments to the Family Law regulating the issue of legal capacity are currently under way, but at this time it is unlikely that the changes will bring about more serious improvements.

## VIII.2. Position of children with mental disability in residential institutions

71. Human rights violations continue to occur in residential institutions for children with mental disabilities. In 2019, there were 1339 children with disabilities accommodated in residential institutions across Serbia (546 female and 793 male)<sup>89</sup>.

72. Disability Right Initiative (DRI) and MDRI-S published the Report: *Serbia's Forgotten Children*<sup>90</sup> based on findings collected during 2019. The report shows that Serbia made progress in reducing number of children without disabilities in residential institutions but forgot about children with disabilities. The Serbian government has been put on notice about the atrocious conditions, abuse, and torture taking place in its facilities through years of advocacy by DRI, MDRI-S, and other allies and has failed to act or hold abusers to account. As an example in one of the institutions, , the stench of urine, body odor, feces, and filthy bedding was overpowering.

73. Children with mental disabilities living in residential institutions are exposed to cruel, inhuman and degrading treatment, often mixed with adults and face a lifetime of segregation. Infants under the age of 3 years old continue to be admitted and left in institutions – a practice that will subject them to developmental delays and psychological damage that may last a lifetime.

74. Children are often denied access to any medical care in general hospitals. The research team saw children with cerebral palsy lying all day long in metal cribs with high railings – effectively functioning as cages. Some of the children were fed with nasogastric tubes – a tube that carries food from the nose into the stomach, the use of which can lead to ulcers and infections, aspiration, intestinal perforation that causes internal bleeding, pneumonia, and death. The staff in one of the institutions emphasized that 'palliative care' is not properly regulated by law and is often used as an excuse by hospitals and health care professionals to deny treatment to institutionalized children with disabilities. There were children with hydrocephalus. Without proper treatment, children are in constant pain, are unable to move, and will eventually die. If lifesaving treatment is made readily available, children can

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<sup>86</sup> Ljiljana Plazinić, *Research findings on the practices of centers for social work regarding deprivation of legal capacity*, MDRI-S, Belgrade, 2020, available at: <https://www.mdri-s.org/wp-content/uploads/2020/10/Istrazivacki-nalazi.pdf>

<sup>87</sup> According to the 2018 Report on the work of the centers for social work by the Republic Institute for Social Protection.

<sup>88</sup> Kosana Beker, Sandra Perić and Lazar Stefanović, *Guidelines for Centers for Social Work*, MDRI-S, Belgrade, 2020

<sup>89</sup> According to data that MDRI-S received from the Republic Institute for Social Protection in August 2021.

<sup>90</sup> Group of authors, *Serbia's Forgotten Children*, Belgrade, June 2021, available at: <https://www.mdri-s.org/wp-content/uploads/2021/06/Serbia-2021-web-ENG.pdf>



live long, healthy lives. By international standards, denial of pain medication constitutes inhuman and degrading or treatment and can amount to nothing less than torture. Children left to die of hydrocephalus, and denied appropriate pain medication that is readily available, are subject to severe pain amounting to torture.

75. The report further shows that Serbia has not created the community-based services or support to families necessary to ensure that children with mental disabilities can remain in families. So called small group homes are essentially functioning as smaller institutions, and dangerous and life-threatening conditions for some of the children have been noticed in some of those homes

### **VIII.3. Legal framework and the Position of Adults in residential institutions**

76. In March 2020 Serbia adopted the Strategy for Improving the Position of Persons with Disabilities for the Period from 2020 to 2024. The accompanying Action plan offered some promising improvements. It emphasizes the necessity for the DI process, proposes creation and distribution of violence prevention protocols in an accessible format, organization of trainings on the specifics of violence against persons with disability, especially women, points out that the medical treatment could be carried out only with prior informed consent of persons with disability, including women with mental disability living in residential institutions. However, given the COVID-19 pandemic, lack of political will and the fact the Action plan covers only the period 2021-2022, and that it was adopted only in April 2021 – it is impossible to expect positive results.

77. Official intentions to improve the position of persons with disabilities remain futile because proposed and adopted laws, strategies and policies are not in line with international regulations and standards, and they are even contradictory to each other. In addition, in past years, it has become a common practice that a large number of laws and regulations are proposed and adopted simultaneously in a very short time. The process of adopting the laws is not transparent and does not include persons with mental disabilities and sometimes not even civil society organizations. Such a pace makes it impossible for civil society organizations and other interested parties to review proposals thoroughly and submit meaningful comments and suggestions.

78. However, together with other local organizations MDRI-S, managed to review in detail two drafts of great significance proposed by the Ministry of Labour, Employment, Veteran and Social Affairs. The first one is the long-awaited Strategy of Deinstitutionalization and Development of Social Services in the Community 2021-2026 (henceforth DI strategy) and the second is the Draft Law on Protection of the Rights of Residents of Temporary Residential Services in Social Care Homes (henceforth Draft Law on residential care). Both documents were contrary to the international standards and contained inadmissible provisions that would further deteriorate the rights of persons with disabilities.

79. Fearing that comments will not be taken into account, MDRI-S and 16 other local and international NGOs alarmed international competent bodies through official Letter of Attention. To date, no official information is available regarding the DI strategy and Draft Law on residential care, which might be taken as a good sign that both documents will be rewritten before adoption.

80. When it comes to the women with mental disability, Serbia still fails to harmonize legal framework with the Convention on preventing and combating violence against women and domestic violence (Istanbul convention). Women and girls in residential and psychiatric institutions are affected by multiple discrimination, based on gender, disability, place of residence and other personal characteristics. They are at higher risk of all types of abuse and neglect, and specific forms of gender-based violence, such as forced abortion, forced sterilization, contraception without informed consent. Women living in residential institutions lack privacy, they are exposed to physical, psychological, and sexual violence by other beneficiaries or by institutions' staff, while at the same time they lack adequate protection and prevention.<sup>91</sup>

### **VIII.4. Impact of COVID-19 pandemic on people with mental disability**

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<sup>91</sup> Bljana Janjić, Kosana Beker and Valentina Lepojević, Protection of Sexual and Reproductive Rights of Women with Mental Disabilities and Protection from Violence



81. The consequences of the pandemic very quickly exposed the authorities' treatment of persons with disability. People living both in the community and in institutions were affected by disproportionate measures and for a very long period of time, their lives were like being held in prison. While imposing safety measures, Serbian authorities failed to recognize and properly respond to the specifics that certain types of disability imply. Persons with disability, or their representative organizations, were not included in the working groups formed to plan measures, which lead to discriminatory practices. Many advocacy organizations and organizations of persons with disabilities pushed for changes to the pandemic measures to avoid harmful and potentially fatal consequences. Some of these changes were eventually implemented, such as removal of restrictions on the movement of children and adults with intellectual disabilities and autism during curfews.

82. Hundreds of persons with mental disability who live in residential institutions were at the highest risk of infection, without possibility to keep the physical distance. They were forbidden to move outside of the institution, sometimes even to get out of their rooms. In March 2020, the Ministry issued a ban on all visits to residential institutions. With very limited access to mobile phones and internet, people living in institutions were cut out from the outside world. After three months, the measures were mitigated to allow walks in the yard and 15 minutes visits, but under special conditions: if the outside temperature was above 18 degrees Celsius and there was no wind or rain.

83. According to the information presented in the report *Serbia's Forgotten Children*, residents who got infected were not provided with treatment except in the institution, and in some cases infected residents were not isolated from others. When residents needed to leave the institution for medical reasons, they had to isolate themselves for two weeks upon each return.

84. The way the infected were treated, the number of infected and the number of deaths by individual institutions is still unknown to the public. Given that there are no mechanisms for prevention and reporting of violence in institutions, as well as that information on the situation in residential institutions was very limited during almost the entire period of the pandemic, we can only assume how persons with disability were treated in such rigorous conditions. For more than a year, there has been no external control, which is one of the key ways of monitoring violence and providing prevention and protection against violence<sup>92</sup>.

85. If not before, this pandemic itself showed the necessity and urgency of deinstitutionalization. However, not only did the authorities not take any steps to speed up the processes, but they also placed some of a very few people from the independent living unit back to institutions as a way of "protection against infection". Along with the fact that in recent years there has been investment in strengthening residential institutions, official commitment of the Serbian authorities to the process of deinstitutionalization has been brought to the absurdity.

86. Recently, the pandemic situation has become aggravated. Institutions will probably be closed once more as a protective measure. The world crisis caused by COVID-19, did not accelerate the closure of institutions, but quite the opposite led to people being confined inside institutions even more firmly. The authorities legalized wrongful confinement.

## IX. Prison Overcrowding

87. In the reporting period, Serbia has failed to address the problem of prison overcrowding. The criminal justice policy is still based on the short-term prison sentences, excessive use of pre-trial detention and a high number of days of unjustified pre-trial detention. Prison overcrowding is particularly worrying in 4 biggest penitentiaries: Sremska Mitrovica, Belgrade, Niš and Požarevac. This has negatively affected all other processes in prisons: meaningful activities, rehabilitation programs, access to health care and others.<sup>93</sup>

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<sup>92</sup> Snežana Lazarević and Dragana Ćirić Milovanović, Analysis of the work of internal and independent control mechanisms for the protection of human rights of users of social protection institutions during the COVID-19 crisis in the Republic of Serbia, MDRI-S, 2021

<sup>93</sup> See more in, BCHR, *Human Right in Serbia in 2020*, available at: <https://bit.ly/3aa2J4B>, pp. 81-86.



88. Serbia still applies the practice which has been described by the CPT as ‘the relict of the past’. This implies that pre-trial detainees are locked up in their cells for 22 hours or more, without possibility to work or to be involved in other meaningful activities. In combination with overcrowding and the living conditions which vary from one penitentiary to another, this kind of treatment could amount to inhumane and degrading treatment.<sup>94</sup>

## X. Introduction of life imprisonment

89. Life imprisonment was introduced in the Serbian Criminal Code on 21 May 2019. The amendments entered into force on 1 December 2019. The following day, non-governmental organisations and individuals filed an initiative with the Constitutional Court asking it to review the constitutionality of the amendments prohibiting parole for crimes warranting life imprisonment. Under the Amendments to the CC, life imprisonment may be imposed for all crimes that earlier warranted up to 30 and 40 years’ imprisonment and the gravest crimes against sexual freedoms (rape, sexual intercourse with a helpless person, a child or by abuse of position). Life imprisonment without parole is envisaged for the gravest forms of crimes against sexual freedoms (which had not even warranted the harshest penalties – between 30 and 40 years’ imprisonment – until 2019) and for the murder of children and pregnant women. Offenders convicted to life imprisonment for other crimes will become eligible for parole after they serve 27 years in prison.<sup>95</sup>

90. The CoE Human Rights Commissioner in her letter sent to the Minister of Justice, stated that for a life sentence to be compatible with Article 3 of the ECHR, it must be reducible, or in other words there has to be a prospect of the prisoners’ release and the possibility of a review of the sentence. Such a review should allow the domestic authorities to consider whether any changes in the life of a prisoner are so significant and such progress towards rehabilitation has been made in the course of the sentence that continued detention can no longer be justified on legitimate penological grounds. The Commissioner called on the Serbian authorities to reconsider their decision to put the draft law forward and to organise a broader public debate on the issue.<sup>96</sup> In 2019 Progress Report, the European Commission said that the Serbian Government submitted draft amendments to the Criminal Code to the Parliament in early May 2019, under urgent procedure, introducing life imprisonment without the possibility of conditional release for a number of crimes and that the Parliament adopted the amendments on 21 May 2019. It noted that there were relevant provisions of the European Convention of Human Rights and the case law of the European Court of Human Rights and that the amended law would have to be assessed on this basis.<sup>97</sup> It is important to note that even some experts from the Government’s working group opposed these amendments. There are already two convicts sentenced to life imprisonment without parole, while another Law implies the same limitation.

## XI. The work of the Ombudsman and the National Preventive Mechanism (NPM)

### XI.1. NPM

91. The findings of the NPM can be assessed as not to be in line with the findings of international supervisory bodies in many areas, especially including the police oversight. It is worth mentioning that the number of visits to police stations carried out by the NPM from the beginning of 2014 to the end of 2018 decreased from year to year. From almost 50 visits made in 2014 it dropped to eight visits in 2017, i.e. five visits in 2018. When looking at the number of visits to police stations in relation to the total number of visits carried out by the NPM during each year, it can also be concluded that less attention was paid to oversight of the Police. Thus, in 2014, the share of visits to the Police in relation to the total number of visits of the NPM was about 61%, while in 2017 the share was about 13%, or just over 11% in 2018. As the main problems related to the area of police, the NPM pointed out

<sup>94</sup> CPT, ‘Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017,’ 21 June 2018, CPT/Inf (2018) 21, available at: <http://bit.ly/37UxLL8>, p. 5 and paras. 50-52.

<sup>95</sup> BCHR, ‘Human Rights in Serbia 2019’, available at: <https://bit.ly/3D8W334>, pp. 56-57.

<sup>96</sup> CoE, ‘The Commissioner calls on Serbia to ensure that its draft legislation concerning life imprisonment is compliant with the case-law of the European Court of Human Rights’, available at: <https://bit.ly/3BmqFgX>.

<sup>97</sup> European Commission, Progress Report 2019 Serbia, available at: <https://bit.ly/306YsND>, p. 23.



in its annual reports the poor material conditions of accommodation in detention facilities, the inconsistency of the MIA Instructions on the Treatment of Detained Persons with the applicable standards determining mandatory restraint, the presence of police officers during medical examinations and the lack of training of police officers on how to deal with people with mental disabilities.<sup>98</sup>

92. Contrary to that, in the period under review, Serbia has been sharply criticized several times due to the situation in the area of prohibition of abuse, especially with regard to the work of the Police. Delegations from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Serbia on two occasions, first in 2015 and then in 2017 on an ad hoc visit,<sup>99</sup> and at the end of 2017. The situation in Serbia in the area of abuse has been monitored by a Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SRT)<sup>100</sup> The findings of those two bodies, in all three reports, assess the situation in Serbia as concerning. The CPT's ad hoc visit report from 2017 states that during the visit the delegation received a significant number of allegations of inadequate treatment of detainees by police officers during arrests or interrogations, in the form of slapping, hand and leg beatings, hitting with batons and various non-standard items, even exposure to shocks by hand-held electrical appliances. In a certain number of cases, the delegation collected medical evidence and documentation indicating consistency with allegations of inadequate treatment of detainees by police officers. As during previous visits, the CPT's delegation found non-standard items such as baseball bats, electric extension cords, batons, boxers, etc. in the offices of criminal inspectors. With this report, the CPT called on Serbia to accept the fact that inadequate treatment by the police officers exists and that it is an accepted practice in the current police culture, especially among criminal inspectors.<sup>101</sup>

93. The possible reasons for the great discrepancy between the findings of international supervisory bodies, on the one hand, and the findings of the NPM, on the other, in the field of police work, could be found in the NPM Obs (Observatory of National Mechanisms Against Torture) where observations have been made on the work of the National Mechanism for the Prevention of Torture.<sup>102</sup>

94. At the invitation of the Protector of Citizens, in mid-2018, the experts of that association monitored the work of the NPM during his visits to a psychiatric institution, an institution for the execution of criminal sanctions and a police station. The main findings of the NPM Obs report show that, since 2017, the NPM's ability to fulfil its mandate has been significantly reduced. It was concluded that the Protector of Citizens prohibited NPM officers to visit police stations for three months, confiscated their certificates for access to classified information and that the engagement of external experts during NPM visits was limited for a certain period.

95. NPM Obs paid the most attention to the issue of the efficiency of the NPM of Serbia to deal with its main task - the prevention of torture and other forms of abuse. It has been assessed that during the visit to the institutions, the NPM paid more attention to the material conditions of accommodation of persons deprived of liberty, procedural irregularities, and administrative issues, without addressing the indications that there were cases of abuse in those institutions. The delegation stated that it had noticed many situations where the NPM had not responded to information or suspicions that could indicate individual or general abuse in the supervised institution but had moved lightly to the next issue. Thus, the report describes in detail that during the visit to the police station, the NPM team failed to examine the origin of the trace of blood found in one of the detention rooms in any way and to interview the person who was detained at the time of the NPM visit who "seemed to be in trouble."

96. The report states that "NPM works in very difficult circumstances" and that there was a danger that changes in the NPM management shook the team's confidence that it would have the support if it criticized the work of the supervised institution without very strong evidence of abuse.

97. The delegation concluded that these shortcomings in the work of the NPM stem from a combination of several factors, such as: efforts to visit as many institutions as possible - which limits time for more detailed supervision, lack of training and resources, focus on material conditions of

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<sup>98</sup> NPM Report for 2018. page 13, available at: <https://bit.ly/2YtnNAw>.

<sup>99</sup> CPT Reports available at: [www.coe.int/en/web/cpt/serbia](http://www.coe.int/en/web/cpt/serbia).

<sup>100</sup> SRT Report available at: <http://bit.ly/2P5PIU1>.

<sup>101</sup> CPT/Inf (2018) 21, § 9 etc

<sup>102</sup> See more at: <https://www.npmobs.org/activities#Pilotvisits>.



accommodation and procedural irregularities, lack of specific focus on information directly related to possible abuse, lack of clear encouragement from NPM management and the Protector of Citizens, NPM team's position not to record allegations unless substantiated by other evidence.<sup>103</sup>

98. Doubts about the thoroughness of the NPM's visits to closed institutions are justified, having in mind the fact to what extent the field findings collected by the NPM team and the field findings collected by civil society organizations differ. At the end of October 2018, the team of the Belgrade Center for Human Rights monitored the work of the Penitentiary in Sremska Mitrovica, during which they found a large number of cases from 2018 on the use of coercive means against the convicts involving the use of rubber batons in the area of the back (spine), without any justification. Upon inspection of the cases, it was noticed that the files contained deficient medical reports (poor description of injuries, no testimony of the convict about how the injuries occurred, etc.), the injuries of convicted persons were not photographed. In all cases, the Director of the Penitentiary assessed the use of coercive measures by the Commander as lawful. It has been noted, during the visits that medical reports on examinations of convicted persons after the use of coercive measures are kept in the records of the Security Service, which is an obstacle to conducting an effective and efficient investigation in the case of abuse. Unobstructed access to medical reports gives commanders the opportunity to adjust their reports on the use of force to the allegations recorded in the medical records, and thus to falsify events. For the above reasons, but also for the protection of particularly sensitive personal data, the mentioned reports and relevant medical documentation should be kept in the records of the Health Care Service or by the Director of Penitentiary.

99. A few months after the visit of the team of the Belgrade Center for Human Rights, the NPM team visited the Mitrovica Penitentiary, and also monitored the records on the use of coercive means, during which no omissions by the Penitentiary services were noted. On the contrary, record keeping in that particular Penitentiary is highlighted as an example of good practice<sup>104</sup>

100. With the systematization of jobs in the Professional Service of the Protector of Citizens from March 2019, the NPM was transformed from a Secretariat into a Department, while the Department for the Rights of Persons Deprived of Liberty, which previously acted on complaints from persons deprived of liberty, was abolished.<sup>105</sup> In the last two years, four civil society organizations (CSOs) that were previously part of the NPM withdrew from NPM.<sup>106</sup> In addition to the NPM, visits to persons deprived of their liberty occasionally include the newly established Emergency Department, which deals with various areas of work and does not specialize in the prevention of torture.<sup>107</sup> The insensitivity and insufficient training of the officers of the Emergency Department became evident when during the monitoring of the police actions at the protests in Belgrade in July 2020, when two officers of this Department passed by the beaten man without paying any attention to him.<sup>108</sup>

## **XI.2. The Department for Persons Deprived of Liberty**

101. Within the former Department for the Rights of Persons Deprived of Liberty, four employees were working exclusively in this area<sup>109</sup>, and now the complaints of persons deprived of liberty are processed within the Sector for the Protection of Human Rights and Freedoms and the Rights of Persons Deprived of Liberty, which covers a very wide range of human rights and freedoms. Due to the lack of specialized staff to work on the complaints of persons deprived of liberty, there is often a mixing of preventive and reactive functions, which were previously strictly separated.<sup>110</sup> Both through

<sup>103</sup> Se NPM Obs Report: paragraph 138 onwards

<sup>104</sup> Report of NPM on the visit to Penitentiary Sremska Mitrovica in 2019. pages 6 and 7, available at: <https://bit.ly/3ablaWz>.

<sup>105</sup> Policy on internal organization and systematization of jobs in the Professional Service of the Protector of Citizens, no 363-241/2019, dated 01.03.2019, available at: <https://bit.ly/3DjsawS>.

<sup>106</sup> The following CSOs withdrew from the NPM: Belgrade Center for Human Rights, Initiative for the Protection of Persons with Disabilities (MDRI-S), International Aid Network IAN and Initiative A11

<sup>107</sup> Information about the visits of this department available at: <https://bit.ly/2Yslf4A>.

<sup>108</sup> Video available through the following link: <https://bit.ly/2WeFla2>

<sup>109</sup> Two employees left the Professional Service of the Department for the Rights of Persons Deprived of Liberty, while the other two employees were transferred to the NPM.

<sup>110</sup> NPM visit to the Kolevka Children's Home on an anonymous complaint of abuse, available at: <https://bit.ly/3mw7Di4>, A visit to the complainant, detainee Mika Aleksić, as part of a regular visit to the District Prison Belgrade, available at: <https://bit.ly/3uLQ6Wl>.



the NPM reports and in complaints procedures or on its own initiative, in case of deficiencies, recommendations mainly refer to general future actions of unspecified officials, and rarely to determining individual responsibility and satisfaction for victims, while acting on recommendations is mainly reduced to the assurances of the competent authorities that they will not commit similar violations in the future and that they will respect the regulations.<sup>111</sup>

### **XI.3. The work of the Protector of Citizens and the NPM in the changed circumstances caused by the COVID-19 pandemic**

102. With a focus on coronavirus protection measures, during the state of emergency, the NPM visited the District Prison in Belgrade, the Penitentiary in Belgrade, the Penitentiary in Belgrade - Padinska Skela, the Shelter for Foreigners of the Ministry of the Interior in Padinska Skela, the Penitentiary institute in Sremska Mitrovica,<sup>112</sup> Reception center in Obrenovac, Asylum Center in Krnjača and Reception Center in Adaševci.<sup>113</sup> However, these visits had several shortcomings that could have affected their quality. First, the NPM checked epidemiological conditions and health care measures in closed institutions without including doctors in the visiting team, which is a common practice in the work of that body. Representatives of CSOs with which the NPM cooperates were not included in most of the visits, which is also a common practice, and visits to three very large institutions (Penitentiary in Belgrade, Penitentiary in Belgrade - Padinska Skela and Shelter for Foreigners) were conducted on the same day by an NPM team consisting of only two persons. The NPM did not visit any psychiatric or home-type social care facilities during the state of emergency. At the same time in October 2020, the Ministry of Labour, Employment, Veterans' and Social Affairs banned the NPM from visiting home-type social protection institutions under the pretext that the visits were not safe for beneficiaries<sup>114</sup>

103. In addition, private social welfare institutions were not visited under the pretext of the Protector of Citizens that the NPM has no obligation to control private institutions<sup>115</sup>, although Article 4 of the OPCAT provides otherwise.

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<sup>111</sup> Some examples are: Ineffective police response to gatherings of unknown persons on the roofs of buildings, available at: <https://bit.ly/3mrLNMT>; Police officers of PS Vračar act according to the recommendations of the Protector of Citizens, available at: <https://bit.ly/3AnL8AU>; CFRM and MIA RS did not prevent the free movement of migrants during the transfer from the Asylum Center to the Reception Center, available at: <https://bit.ly/36nVVPp>; NPM Thematic Report: Police Treatment of Persons Deprived of Liberty During Public Gatherings in Belgrade, available at: <https://bit.ly/2Yu7rb2>.

<sup>112</sup> NPM Thematic Report: *Application of the CPT's Principles for the Treatment of Persons Deprived of Liberty during the Coronavirus Pandemic*, May 2020, available at: <https://bit.ly/3iFhjWa>.

<sup>113</sup> Special report on the activities of the Protector of Citizens during the state of emergency COVID-19, June 2020, available at: <https://bit.ly/2YxhPyP>.

<sup>114</sup> Statements of the Protector of Citizens are available at: <https://bit.ly/301SfCu> i <https://bit.ly/3uONtni>.

<sup>115</sup> Statement of the Protector of Citizens are available at: <https://bit.ly/3iCgQnP>.