

CAT SHADOW REPORT

This document is mutual product of the following organisations:

ASTRA anti trafficking action, Belgrade
Belgrade Centre for Human Rights, Belgrade
Centre for Human Rights-Nis
Committee for Human Rights, Leskovac
Helsinki committee for human rights, Belgrade
Humanitarian Law Centre, Belgrade
International Aid Network, Belgrade.

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This document consists of two parts. In the first part, information provided follow the specific points given in the document *List of issues to be considered during the examination of the initial report of the Republic of Serbia (CAT/C/SRB/1)*. Additional information concerning torture issues are presented at the end of the first part.

Second part is Review of the report of State party Serbia, prepared by Centre for Human Rights-Nis

Annex 1 includes detailed report on prison conditions – specific data and general concluding remarks of the 4-year *Prison Monitoring* project implemented by the Helsinki Committee for Human Rights in Serbia.

I The answers and comments given following the points from the **List of issues to be considered during the examination of the initial report of the Republic of Serbia (CAT/C/SRB/1)**

Articles 1 and 4

1. The initial report covers the 1992-2003 period and data on the violations of the prohibition of torture in the former Yugoslavia. We are, however, of the opinion that it would be best to analyse the current state of affairs, list the existing problems and on that basis seek the solutions to them.

Violations of physical and psychological integrity are incriminated by the Constitution of the Republic of Serbia, its Criminal Code, Criminal Procedure Code (CPC), and Penal Sanctions Enforcement Act (PSEA). The four laws are in accordance with certain principles and standards laid down in international documents binding on Serbia. This partial harmonisation of international and national norms, however, still allows for torture, cruel and brutal treatment and inhumane conduct. Violations of the prohibition of torture and inhumane treatment have been increasingly in the public limelight over the past few years, but the state bodies' lack of will to establish mechanisms to suppress torture, is still apparent.

The Constitution of Serbia clearly prohibits torture in Article 25. That general provision is in accordance with Article 1 of the Convention.

The Serbian Criminal Code incriminates torture and ill-treatment in Article 137, in which it sets out the scope of penalties for the perpetrators and lays down harsher penalties if the crime is committed by an official in the discharge of duty. The penalties listed in Article 137, however, are not proportionate to the gravity of the crime. Under the Code, perpetrators of torture and ill-treatment may be convicted to prison sentences lasting up to five years and up to eight years if the perpetrator is an officer discharging his/her duty.

The problem is, however, that attempts of torture are not incriminated at all, wherefore the Code deviates from Article 4 of the Convention.

The new Criminal Code envisages more lenient sentences for the crimes of illegal deprivation of liberty and extortion of an admission or statement than the amended articles of the prior Criminal Code used to. The judicial penal policy is still more lenient than the legislative policy; national courts mostly pass much laxer sentences than those envisaged by laws, most often suspended sentences. This practice is not in accordance with the obligations of states stipulated by the Convention against Torture.

The Criminal Procedure Code does not envisage special proceedings in case of torture. It does not stipulate the urgent adjudication of such cases or specify a particular method for documenting facts. Although practice has shown that physical injuries are best indicators of torture, the national courts do not attach special evidentiary importance to medical documentation.

The non-existence of a special method of gathering data is the greatest problem in handling cases of torture due to the specificity of the violation of the right.

Article 2

2. Right to communication and notification of a third party of one's deprivation of liberty

Article 27 of the Constitution entitles a person deprived of liberty to notify a person of his or her choice that s/he has been deprived of liberty. This right implies that it cannot be exercised with delay. The CPC also obliges the police to inform the family or the person with whom the person deprived of liberty has been living with of his/her deprivation of liberty within 24 hours at the latest. Article 61 of the PSEA clearly envisages the right of a person admitted to a penal institution to notify/call his or her family.

The right to communication and notification of a third party is violated in practice notwithstanding all these clearly formulated legal provisions.

E.g.: Zoran Katić, who had been held in detention for six days because he had committed a traffic violation, was not given the opportunity to contact his family during custody. He was sentenced to 17 days in jail because he did not have enough money to pay the traffic fine. He was able to contact his family after spending six days in jail.

Proposal: The Ministry of Internal Affairs and the Ministry of Justice ought to be sued, persons responsible ought to be punished and a body charged with monitoring such cases ought to be established.

Right to have access to a doctor

The Constitution of Serbia does not envisage the right of persons deprived of liberty to have access to a doctor.

Under the Criminal Code, a person deprived of liberty, his/her counsel or family member may ask the investigating judge to order a medical examination. Such a request may also be filed by the public prosecutor; the decision allowing medical examination is taken by the investigating judge.

The PSEA deals with access to a doctor in a number of articles, envisaging notably: medical examination upon admission to a penitentiary (Art. 60) and hospital treatment (Art. 23). All persons subjected to solitary confinement must undergo a medical examination. The medical report is submitted to the warden. The PSEA also lists conditions solitary confinement must fulfil in terms of size, lighting, equipment and hygiene (Arts. 151 and 152).

Serbia's penal institutions, however, lack doctors who would be at the disposal of persons deprived of liberty round the clock. The shortage of doctors in penitentiary facilities can be ascribed to their substandard working conditions (low salaries, the risks the job entails, lack of adequate protection).

Surveys have shown that staff dealing with persons deprived of liberty is not keen on ensuring access to a doctor even when health care is indispensable. The police rarely allow detainees to see a doctor of their own choice. Doctors in health institutions usually try to dissuade the victims from accusing policemen of torture and abuse and do not wish to confront them. Health professionals are obviously unaware of their obligations laid down in the World Medical Association (WMA) Tokyo Declaration and the WMA Resolution on Human Rights. Serbia's obligations under Article 10 of the Convention against Torture on educating and training health staff treating persons deprived of liberty are not drawn attention to either in the Health Protection Act, other laws or in practice.

Problem: medical reports in torture cases are usually incorrect and portray the injuries as milder than they in fact are (doctors usually find that the victim suffered light bodily injuries); if it is established that the facts in the medical reports do not reflect reality, the doctors are not taken to task.

PETKOVIĆ Case

The deceased Milan Petković died on 17 July 2006 under suspicious circumstances whilst in the care of the Serbian Ministry of Justice as a convicted prisoner serving his sentence in the Požarevac Prison.

Milan Petković was not given adequate health care although he had a fever, was hallucinating and vomiting in the dormitory, which is why he missed lunch. He was punished and transferred to Block VII (so-called 'prison in prison').

According to the reports, Milan Petković was referred to the City Health Centre in Požarevac. He was not given adequate health care there and was returned to Block VII. After taking him to the City Health Centre in Požarevac for the second time, the prison officers drove Petković to the Belgrade Emergency Centre.

Milan Petković was pronounced dead at 9.30 p.m. The family Petković was informed about his death on 18 July 2005, late in the afternoon, around 5 p.m.

It remains unclear whether Milan Petković stopped showing signs of life in the car, at the entrance to the Emergency Centre or in hospital.

The competent prosecutor believed that there were no grounds to uphold the motion to open an investigation, as Milan Petković died from drug abuse. The competent bodies rejected his family's criminal report and it filed an appeal with the Supreme Court of Serbia.

Right to select one's own attorney

The right to an attorney, i.e. right of a person deprived of liberty to counsel of his/her own choosing, laid down both in the Constitution of Serbia (Arts 29 and 33) and the CPC (Art. 5(1)), is frequently violated in practice; moreover, the law does not envisage that the officials who had violated it be called to account. Right to counsel of a person in police custody is violated the most frequently. Violations of the right of persons deprived of liberty to have access to a counsel often take the following forms: police fail to issue an official warrant on the deprivation of liberty within two hours upon arrest; police fail to inform persons deprived of liberty of their rights (such persons are often illiterate or uneducated); police do not allow persons to choose a counsel of their own free will and assign them counsel *ex officio*. Such counsels are frequently in collusion with the police.

E.g: Marinko Vranjaš and Erne Čeh in 2006 – After taken in for questioning about a fight his friend Čeh was involved in, Marinko Vranjaš asked for counsel. His request was rejected and he was beaten up. He had had no information about the fight.

Problem: the police frequently tell persons they are taking them in just for questioning and tell them they do not need their attorney present. Once the questioning turns into interrogation and the persons ask for their counsel, the police deny them this right.

Internal Control

The Police Act passed in 2005 foresees the founding of the Internal Control Sector to "control the lawfulness of the work of the police, especially with regard to the

respect and protection of human rights during the discharge of police duties and exercise of police powers". The Minister of Internal Affairs is charged with regulating the forms and manner of conducting the internal control of the work of the police in detail.

Internal control units have been established in all regional police centres. They are authorised to launch investigations into allegations of police abuse filed by citizens. The Internal Control Sector is authorised to act on complaints by natural or legal persons and at its own initiative. Citizens file complaints about the work of policemen to their superiors. If they are dissatisfied with the decisions reached by the superiors, the complaints are reviewed by a commission. The commission members comprise members of the Internal Control Sector and police staff and representatives of citizens. The commission reviews whether the complain is grounded; if it is, a criminal or disciplinary report is filed against the policeman; if the complaint is found to be groundless, the complainant may file a criminal report, a private lawsuit or a compensation claim.

Most of the perpetrators of torture, who were subjected to disciplinary measures, have not been suspended or dismissed from their jobs.

Radivoje Janković Case

On 7 April 1997, Radivoje Janković was arrested by two Surdulica police officers, Dragoslav Jovanović and Milan Dimitrijević, and taken to the police station where he was held for 5 hours. The police officers beat Janković with their hands and sticks and kicked him, forcing him to confess to the possession of illicit coffee. Janković sustained serious physical injuries in result of the torture. The police officers threatened him not to go to the hospital and seek treatment.

Surdulica police chief Dragan Stanković was informed of the incident, but did not institute criminal or disciplinary proceedings against Jovanović and Dimitrijević. Janković sought to bring a private action, but the District Court in Vranje rejected the motion for the opening of criminal proceedings against Kitanović (the Deputy Public Prosecutor who was alleged to have instigated and observed the torture) and Dimitrijević. Proceedings were opened against Jovanović only, who was sentenced to 10-month imprisonment by the District Court in Vranje on 9 November 2000. The District Public Prosecutor in Vranje lodged an appeal and the higher court altered the sentence to 18 months' imprisonment. In the meantime, Dimitrijević and Kitanović sued Radivoje Jovanović for falsely accusing them and Jovanović was convicted and sentenced to three months' imprisonment by the Municipal Court in the ensuing proceedings. Jovanović's lawyer lodged an appeal. The verdict of the higher court against Jovanović for torture has yet to be enforced. Furthermore, the Supreme Court found Jovanović guilty of extorting evidence but the sentence imposed on him has not been enforced to date either.

Incidents in which policemen resorted to violence and inflicted bodily injuries to citizens while they were off duty occurred in 2007 as well.

Examples:

Policeman Milan Rajković was off duty when he inflicted grave bodily injuries to Milan Mitić.

The residents of the town of Osečina complained about the conduct of some policemen and demanded that the competent authorities punish the perpetrators. The Office of the Police Inspector General concluded that the police had not breached any rules.

Problem: notwithstanding the Police Act and the Rulebook on the Complaint Review Procedure, there are no clear provisions on steps to be taken in case of torture or cruel treatment. There is no independent body to impartially investigate the allegations, which results in the non-punishment of the perpetrators of the crime of torture.

5.

Ombudsman and the Provincial Ombudsman (Vojvodina) perform inspections in places of detention. As far as we know, in prisons in Vojvodina, there are sealed boxes in which the prisoners put their complaints and those complaints are exclusively picked up by Ombudsman's Service.

Serbian NGOs as well perform independent inspections when they manage to provide financing of their projects and the agreement by the Directorate for execution of prison sanctions for the implementation of those projects. We are not sure that national NGO would get agreement for only one visit to any prison. .

Article 3 and Article 11 and 12

9. and 19 The Office of the War Crimes Prosecutor was founded on 1 July 2003, following the adoption of the Act on the Organisation and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes. A special War Crimes Chamber for trying perpetrators of war crimes was simultaneously established within the Belgrade District Court and war crimes have since been within the exclusive jurisdiction of Belgrade District Court. A total of 116 persons have to date been prosecuted by the war crimes prosecutor, in cases involving 2113 victims of the wars in the former Yugoslavia. Before that, war crimes had been within the jurisdiction of all Serbia' district courts.

Four persons were sentenced to 20 years' imprisonment each and one person was sentenced to 15 years in prison in trials that opened before the Office of the War Crimes Prosecutor and the special War Crimes Chamber were established in 2003 (cases "Sjeverin" and "Podujevo"),.

One 1999 case (two persons indicted, 3 victims), within the jurisdiction of the Požarevac District Court, is being retried after the Supreme Court Of Serbia referred the case back to the first-instance court for a retrial for the second time.

The Government of Serbia adopted the Action Plan for achieving full cooperation with the International Criminal Tribunal for the Former Yugoslavia in July 2006 after the SAA talks were suspended. The Plan was presented to EU officials on 17 July (by the then Prime Minister Vojislav Koštunica. Koštunica then said that the Plan was modelled after the one implemented by Croatia and resulting in the arrest of Gen. Ante Gotovina.

The six-point Action Plan lists as its main goal to finding, arrest and extradition of the ICTY indictees at large (only Hadžić and Mladić are still at large). The Plan, implemented with the involvement of the security sector, envisages coordination with the

judiciary and cooperation with the ICTY, as well as amendments of specific laws. The Chairman of Serbia's National Council for Cooperation with the ICTY Rasim Ljajić and War Crimes Prosecutor Vladimir Vukčević are in charge of implementing the Action Plan. They report on the implementation of the Plan to the ICTY Prosecution; the continuation of Serbia's EU integration depends on the ICTY Prosecution's assessment of Serbia's cooperation with the Tribunal.

Cooperation - Archives
Memorandum of understanding on access to the Electronic Disclosure System between the ICTY and the Serbian War Crimes Prosecution Office

Article 10

16.

In order to have human rights norms applied, first step would have to be cognition of their contents.

For complete improvement of prison functioning as a system, in line with European Prison Rules, we believe that it is necessary:

a/ To provide objectively better pre-conditions, like additional education and better (in every sense) conditions for the work of services and individual within each of the services;

b/ That the prisoner is understood and treated as a person whose penalty is restricted freedom of a movement for a certain period of time, while he/she has right to enjoy all other rights (that belong to each individual) and which cannot be withdrawn during sentence serving.

c/ Adequate legal framework, procedures and mechanisms of control

During project implementation, one of our aims was to find out what is missing so that these preconditions could be fulfilled simultaneously. That is why, in a set of questions that we asked the staff in services (Treatment Service, Security Service, Health Care Service, Service for general affairs) , we included those related to knowing of documents on human rights but as well on prison regulative.

We consider general international (UN and EU) documents on Human rights as a group of values expressed in legal language that, in some measure, guarantees that values can be protected and implemented. That is why, for introduction, we asked representatives of different services what they considered under the term values, so that we could argue whether it is enough that needed education on human rights is only theoretical or it requires previous sensibilization of those who should be taught about its contents. Under sensibilization we consider introduction of members in the process during which, by distribution of roles, they have possibility to reach certain value through their own experience.

For the purpose of this Report, we only give staff's answers to a set of questions about **Education about international regulations (general and imprisonment)**

Interviewees were not introduced in great amount with important universal and regional international instruments (Universal declaration on Human rights, Convention of children rights, European convention on Human rights, Pact on economical, social and

cultural right, Convention on elimination of all kinds of women's discrimination
Convention on elimination of all kinds of discrimination...)

From the offered list of international documents from the area important for the staff in Penitentiary, all the interviewees recognize only European Prison Rules, for which they know that exist and that are available in Penitentiary.

They think that it would mean a lot to them if the greater number of Recommendations, conventions and resolutions were translated in Serbian so that they could get introduced with the contents.

Two of all interviewees attended seminar on international instruments in the past.

Article 12

21.

As a great accomplishment Centre for Human Rights-Nis consider the fact that 32 out of 64 recommendations that we gave during the realization of monitoring (may 2007-may 2008) were adopted and implemented by Prison management. This number would be even higher if there were technical and material conditions.

List of adopted recommendations:

- 1) In the period between our visits "1" and "2" 2 solitary cells were painted and completely arranged. Works on third one are coming to the end and the works are being performed on 4 more (10.8.2007.)
- 2) A part of the ceiling that was cracked is painted (10.8.2007.)
- 3) 4 flushing through cisterns are installed in "C" Ward. Proper functioning of flushing through cisterns is daily checked and depends of the pressure in the network; (12.10.2007)
- 4) Number of daily newspapers available to prisoners is increased (5 times increased- from 24 to 108); (12.10.2007)
- 5) Shortened and simplified contents of House Rules, adjusted to average prisoner's understanding, are posed in "B" Pavilion; (12.10.2007)
- 6) House Rules is foiled in plastic which prevents it from being torn right after posing; (12.10.2007)
- 7) At the moment the work of the library is being reorganized so that it could enable prisoners to take books for reading in easier and faster way. (based on our suggestion) (12.10.2007)
- 8) Procurement of the material for painting and artistic (carving) section is under way at the moment. (12.10.2007)
- 9) In the procedure of providing legal assistance, prisoners are enabled to have confidential conversation with an officer from the Legal Department of Penitentiary, without the presence of other persons. (7.12.2007.)
- 10) Metal detecting gate on the work section entrance/exit is fixed (7.12.2007.)
- 11) Evidence keeping regarding illiteracy at the admittance of the prisoners in the Penitentiary has started (7.12.2007.)

- 12) „To increase internal security of Albanian prisoners in the period to come, at least for three months. ` Security Department is given instructions to pay attention to possibly incidental situations (18.1.2007.)
- 13) “Bearing in mind latest events it is necessary to install video monitoring of solitary cells, i.e. isolation rooms as soon as possible. This investment presents a minor investment in comparison to the benefit it will bring and problems it will prevent”– Project task for the installment of video monitoring is being developed (18.1.2007.)
- 14) “To provide adequate accommodation for disabled prisoners who are in Penitentiary Niš at the moment, with an aim to fulfill obligations of state organs from the valid RS Law on prohibition of disabled people discrimination.”- Special room for the prisoners who use wheel chairs is provided and those prisoners who use canes are accommodated in the rooms on the ground floor. (18.1.2007.)
- 15) 21 Motorola was provided which is, together with the existing ones, based on the statement of the Head of the Security, considered to be a sufficient number, for the safety of Service staff in situations in which it directly depends on their possibility to make a contact with other Service staff. (22.02.)
- 16) The 3 notebook computers have been purchased out from own resources, one for each dormitory and will be used by the treatment officers. (04.04.08.)
- 17) The 20 used desktop PCs are being purchased from the Faculty of occupational safety. These computers are going to be used by the treatment officers as well as the disciplinary commission (1-2). (04.04.08.)
- 18) There is an open call for admission of additional 1-2 treatment officers. (04.04.08.)
- 19) The agreement on cooperation has been established with the Faculty of Philosophy in Niš that will have been realized with the following school year (September 08). According to this agreement the students would act as volunteers in the penitentiary and give support and help to the treatment officers. During the period till September a contract will have been made with precisely defined number of students-volunteers by courses, the volunteer schedule and finished formal part on getting the consent from the ministry. (04.04.08.)
- 20) The recommendation has been accepted that the disciplinary commission should be technically modernized and able to use 1-2 computers purchased from the faculty in their work. (look at 1). (04.04.08.)
- 21) The recommendation has been adopted that disciplinary commission work should be made easier by employing another staff member for administrative work - a secretary. The new members of the disciplinary board are being established at the moment. (04.04.08.)
- 22) The financial means are approved for purchasing new sport equipment according to the made list. The purchasing should be done during the following week from 07.04. to 13.04.08. (04.04.08.)

- 23) The House rules are replaced by a new sample due to the request made by the prisoner on duty. (04.04.08.)
- 24) The cooperation has been established with the Mental hospital in Toponica. According to this agreement there would be a psychiatrist engaged every day from 3-6 pm in the penitentiary ambulance. He/ she would examine the prisoners and decide whether they should be hospitalized or ambulatory treatment is effective satisfactorily. (04.04.08.)
- 25) The appropriate space for sport activities of the prisoners has been provided. The former classrooms have been adopted into the space for sport and recreation. These rooms are renovated, painted, there are sanitary facilities, the floor is covered with rubber layer. Now it is needed to be equipped with sport accessories which is being done at the moment. Due to the safety reasons the sport activities would be done in groups of 50-60 prisoners from the same dormitory although there is more than enough space. The prisoners will be able to do sport activities 90 minutes a day. This is an extra 1 hour time for recreation and staying out on a fresh air. (04.04.08.)
- 26) The new position has been established, a deputy manager. (04.04.08.)
- 27) Due to the improvement of the legal advice services of the prisoners, at each dormitory and admission ward there is a lawyer on duty once a week answering questions, writing submissions in the name of the prisoners or doing something else as long as there are prisoners concerned. (04.04.08.)
- 28) A questionnaire has been done regarding the prisoners' interest on establishing the music section and a list of necessary instruments has been made. (04.04.08.)
- 29) Consequently conducting records and reporting of any of the violent attitudes or ill-treatment whether the imprisoned was injured or not, whether the imprisoned reported the injuries or not, whether the prisoner submitted the accusation against the treatment of the officials./ This is legal obligation. (05.05.08.)
- 30) To increase the number of the treatment officers./ A new part time treatment officer has been employed (05.05.08.)
- 31) Due to the needs of the medical service it is essential to hire one general practitioner and one analyst technician./ A part time practitioner has been employed (05.05.08.)
- 32) All currently possible professional training should be enabled for employees in each and every service. Those trainings should not be directly related to the job they are doing; any additional professional knowledge is much favorable./ Accepted. (05.05.08.)

Ombudsman

The institute of ombudsperson has to date been established at three levels in the Republic of Serbia: at the state level, at the level of the Autonomous Province of Vojvodina and at the local self-government level.

The Protector of Citizens (Ombudsman) is authorised to control the respect of civil rights and the work of administrative authorities.

AP Vojvodina was entitled to independently establish and regulate the status and organisation of the provincial Ombudsman by the Act Establishing Particular Jurisdiction of the Autonomous Province of Vojvodina. The Ombudsman is headquartered in Novi Sad. The Vojvodina Assembly elected Dr. Petar Teofilovic the first Provincial Ombudsman on 24 September 2003.

According to the Provincial Ombudsman's 2007 Annual Report, his main role (as protector of persons deprived of liberty) is to:

1. Support the initiative to move prisoners from one ward to another – criteria for transfer should be clearly listed and defined.
2. Notify inmates of ways in which they can exercise their right to transfer to another ward or prison given that the Ombudsman concluded that inmates are not receiving adequate legal aid. Inmates have filed a large number of complaints to the Ombudsman
3. Have direct contact with inmates with the aim of protecting them; the schedule of visits by Ombudsman staff will be posted on the notice boards.

The Provincial Ombudsman received several complaints from convicts and sent letters to the penitentiaries and district courts to obtain answers with respect to the complaints the inmates had filed with the Director of the Penal Sanctions Enforcement Directorate. The convicts also filed complaints asking for the protection of non-smokers given that there are no designated smoking areas in the prisons and that smoking is permitted in all the facilities.

Article 13

22.

Committee for Human Rights in Leskovac represents their clients, detainees who were victims of cruel, inhuman, degrading treatment or punishment in CDF (Correction and Detention Facilities) in Nis and also victims of inadequate medical treatment with life-time consequences. Photos of detainees in CDF (Correction and Detention Facilities) in Nis who were the victims of the most massive torture and abuse in recent history were taken in Nis hospital by doctor, humanist and are available on request. This case is still actual because the Municipal Public Prosecutor's Office and Investigative Judge of that Court (even though these photos were delivered to them and in the contrary to the regulation of Article 12 of UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment) did not conduct effective and objective investigation. We submitted criminal charges on behalf of 38 detainees, torture and abuse victims during the legal period of 8 days anticipated for submitting of charges but they rejected them and even though we sent them official requests, they didn't send us names and surnames of police officers who were torturing detainees. We needed those data in order to submit specific requests for investigation or criminal charges, but instead we submitted submission to European Court of Human Rights in Strasbourg for violation of prohibition of Article 13 on behalf of 37 detainees, torture victims. We were referring on the case Jasar vs. Former Yugoslavian Republic of Macedonia when, in the identical

situation, court found that there is violation of Article 3 of European Convention. Our submission got number 19072/08.

We want to point out the cases from our practice when victims have photos and medical reports of injuries, but the prosecutor's office together with police violates regulation of Article 12 of UN Convention Against Torture which should be applied according to the Constitution of the Republic Serbia as any other law, didn't conduct efficient and objective investigations and rejected criminal charges like in the case of Pavkovic vs. Police and Mijatovic vs. Police (we are sending you photos of their injuries). Even more horrible is to prosecute victims, which is in the contrary to regulation of Article 13 of UN Convention against Torture like in the case of Mladjan Mirko from Nis (we are sending you photos of his injuries after he was tortured in the police station in Nis). Municipal Prosecutor and Municipal Court prosecute him (case number 1062/05) for the criminal act of Endangering of Security because he allegedly was endangering the security of 5 policemen who abused and tortured him in police station. This case maximally compromises the state, particularly due to statement of judge who said to the victim that she must sentence him.

We have been working on the case of Radivoje Jankovic from village Alekince near Srdulica. The police officer Dragoslav Jovanovic was sentenced to 18 months of imprisonment for extortion of statement from Jankovic by the Supreme Court of the Republic of Serbia Kz.I 41/01 from 25.01.2002 and it was the biggest ever proclaimed sentence for torture till that period and maybe even till today for the member of the police forces. But Municipal Court in Surdulica **did not execute it**, so the validity of the case expired. What kind of state is the state where sentences for torture of the highest judicial instance such as The Supreme Court are not executed? It is unprecedented case, which maximally compromise the Republic of the Serbia. The most interesting fact is that the President of the Municipal Court Mirjana Mitic, who was competent to execute the sentence, did not take any responsibility for that and Ministry of Justice still pays her for her function in the very same Court in Surdulica and also to conduct negative campaign against Jankovic, torture victim despite regulation of Article 13 of UN Convention Against Torture. In fact she proclaimed the decision for execution of criminal sanction (no. 276/2005) against Jankovic in accordance to civil executive procedure, but the truth is that it could be done only by Court in Vranje, not in Surdulica, which has been confirmed by the Court in Vranje so we submitted to the Court in Strasbourg complaints regarding violation of the right on fair trial by competent and legally established court from Article 6 of European Convention.

Municipal Court in Surdulica obligated Jankovic with sentence 285/2005 from September 25, 2007 to pay non-material compensation due to violation of honor and reputation to deputy of the Municipal Public Prosecutor Zoran Kitanovic who is, by the way, responsible for taking Jankovic into the police station where he was tortured and also Jankovic had to pay 40.000 and 27.000 dinars for expenses without any evidence in the contrary to regulation of Article 13 of UN Convention Against Torture, which protects torture victim from all damaging procedures and punishments for submitting the complaints or giving statements.

We would like to inform you that Ministry of Internal Affairs of the Republic of Serbia with its act 04 no.2775/06 from June 7, 2006, has informed Mrs. Marija Jotic from Krusevac that her husband Zoran Jotic and two other persons, Goran Petrovic and Igor

Gajic from Krusevac, were victims of torture during operation “Sablja” (it is precedent that police has formally, in writing confessed the existence of torture), but that the state didn’t conduct efficient and objective investigation. We are asking you, if it is possible, to ask (in this report) the Committee Against Torture to use quasi judicial mechanism which you mentioned in your notice to solve and process this case of torture regarding the fact that Petrovic and Gajic said to us that they were cruelly tortured and taken for false shooting while they were in competence of the police. Police authorities allegedly don’t know who tortured them.

Police documentation sent to us by Mrs. Marija Jotic is available on the request.

These are the examples of cases which shows that when it comes to torture we are living in the imitation of the state that respects law, the state which has partly ratified the regulation and instruments regarding torture, but for example, nobody in official institutions have Istanbul Protocol, Ministry of Health doesn’t have Tokyo Declaration and WHO Resolution of Human Rights, they are not applied in the practice, on the contrary they are usually violated in a way that maximally compromises this state. It is ridiculous that the State has no mechanisms to overcome this situation and is not capable to discipline people in judicial system, in the police, prisons and other state institutions and to obligate them to implement the general rules of international law and ratified norms regarding torture which would affirm the state as humane.

Presented situation, among other things, led to the unfortunate situation that Serbia, even though is a candidate for membership, was not elected for the member of the UN Committee of Human Rights which is very embarrassing.

Data about violations of regulations regarding torture committed by state officers in Serbia, also shows that system of responsibility does not exist in our country.

(For further information please contact Committee for Human Rights in Leskovac)

Article 16

25. Violence against women and girls (domestic violence)

The 2002 Criminal Code was the first in Serbia to define domestic violence as an act of crime. Under Article 118a, the perpetrator shall be prosecuted in the event s/he: uses force or threat, violates the integrity of a family member, uses dangerous weapons or implements, if s/he inflicted grave bodily injuries to or caused the death of a family member. The Article was amended in the Criminal Code that came into force on 1 January 2006. The most important difference between the two Codes is that the latter has reduced the penalties, which can be ascribed the most to court practice. A large number of judges maintained that the penalties prescribed by the Law were too stringent and that the minimum sentences ought to be lowered to avoid debates on the lenient penal policy of the judiciary.

The 2005 Family Act also includes provisions on domestic violence. The Act clearly prohibits all forms of domestic violence, lists them (in Art. 197) and envisages protection measures (Art. 198). The introduction of protection measures is one of the most significant steps Serbia made towards fulfilling international standards related to the protection of the family, women and children. Article 198 lists the protection measures

that may be pronounced autonomously or in conjunction with a penalty provided for by the Criminal Code.

Domestic violence was not defined as a misdemeanour until the adoption of the Misdemeanours Act, which came into force in 2007. Before that, it was possible to prosecute perpetrators of domestic violence by invoking the Act on Public Law and Order, under which shouting, quarrels, threats, insults, causing and participating in fights, impertinent, ruthless and indecent conduct by any person shall be a misdemeanour if that person disrupts public law and order (Art. 6). For these actions to be defined as a misdemeanour with an element of domestic violence, they have to be directed at a family member and affect the community. The new Misdemeanours Act prohibits the perpetrator access to the facility or venue at which the misdemeanour was committed notwithstanding the offender's ownership of the facility (Art. 54).

Although the Family Act stipulates the urgency of domestic violence proceedings, the urgency is insufficiently guaranteed as the law does not set a deadline within which the second hearing must be held. Due to this shortcoming, the proceedings last a long time (up to seven months). In most cases, the first hearings are scheduled within the set deadlines, but the subsequent hearings are set at intervals exceeding one month. This has prompted many victims to abandon the proceedings; prosecutors rarely prosecute domestic violence cases.

The incidence of parental sexual abuse resulting in the children's grave psychological traumas and of sexual abuse of girls has been on the rise in the past few years. There have also been cases of persons abusing their office with the aim of abusing children (the cases of Bishop Pahomije and monk Ilarion – sexual abuse of minors).

Peer violence has also grown in 2008. There are no mechanisms for eliminating or containing this problem in practice.

Problem: extremely low penalties are pronounced against the perpetrators, the proceedings last long, protection measures are not pronounced even in cases in which it has been proven that the perpetrator had been repeatedly violent under the influence of alcohol; the judges often blame the victims "for bringing the violence onto herself" at the trials; there are no adequate prevention measures in place, the state authorities and the NGOs are not cooperating to suppress domestic violence; all staff in institutions for the protection of victims of domestic violence need to undergo training.

27.

Torture, 1995

Facts

Persons, citizens of the Republic of Croatia and Bosnia and Herzegovina, who have escaped to the territory of the Republic of Serbia after the breaking out of the war and after the military action "Oluja" during 1995, were freedom deprived by members of police forces of the Republic of Serbia (MUP RS) and during arrest they were not informed about the reasons for arrest and no one was served with order for arrest. After arrest, these persons were not allowed to contact their families and nobody was brought

to the investigative judge. After they were brought to the nearest police station, these people were taken to the gathering centers by armed escort and under threats of using force and there they were told that they were mobilized. From those gathering centers police has directly transferred them to the Croatian or Bosnian battlefield or to the Serb Volunteer Guard's camps. Refugees got the war schedule, uniforms and arm as members of Army Republika Srpska Krajina, Republika Srpska or Serb Volunteer Guard and they were fighting for several months under their command.

Most of the refugees who were in this described situation were submitted to the different forms of physical or psychological maltreatment. They were exposed to inhuman treatment, their heads were shaved, they were rudely humiliated by the commanders, they were labeled as "traitors of Serbian nation", beaten etc. Regarding the fact that they escaped due to persecution on national basis it is clear that after they were taken to the war territories again they were constantly suffering from fear of high intensity and were exposed to the psychological traumas that, for many of them, exist even today.

Which rights were violated?

Described treatment by authorities of the Republic of Serbia led to massive and systematic violation of basic human rights.

Right to life, freedom and safety which was proclaimed by United Nation's Universal Declaration of Human Rights¹ was roughly violated. Article 9 of United Nation's Universal Declaration of Human Rights proclaims: "No one shall be subjected to arbitrary arrest, detention or exile", article 5 proclaims "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and article 14 proclaims that everyone has the right to seek and to enjoy in other countries asylum from persecution. These United Nation's Universal Declaration of Human Rights standards, even though they are not obligatory, are respected as Common International Law and they are considered as civilization's minimum of human rights protection.

Regulations proclaimed by International Covenant on Civil and Political Rights² were also violated. We are particularly pointing out the violation of article 3 of Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment³, which proclaims that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Article 14 of the same convention proclaims "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation."

Besides already mentioned violation of different international enactments, in these described cases the most obvious violations were violations of Convention related to the Status of Refugees from 1951 and Protocol considering this Convention from 1967.

¹ Declaration proclaimed by General Assembly of UN, 1948.

² Adopted on UN General Assembly in 1966., entered in force in 1976.

³ Adopted by UN General Assembly Resolution in 1984, entered in force in 1987.. Yugoslavia has signed and ratified this convention (Sl. List br. 9/91)

Convention related to the Status of Refugees was ratified and became part of national legislature of SRJ with highest legal power. Article 33.1 in this Convention explicitly ” No Contracting State shall expel or return (" refouler ") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.“

What has been done?

On behalf of the clients IAN has submitted over 80 complaints with more then 100 clients in litigation process with demands for financial compensation due to violation of rights and freedom in accordance to article 200 of Law on Obligatory Relations and with consideration that Article 377 of Law on Obligatory Relations should be applied for this type of right violation.

For those reasons during 2003 and 2004 we were simultaneously submitted complaints and criminal charges to the competent prosecutors offices and if we take in consideration the fact how those people were deprived of freedom, the duration of detainment and what are the consequences there were grounds for criminal prosecution because the damaged those people suffered was caused by these criminal acts of non-legal detainment from Article 63 stand 3 and 4 from Criminal Law of the Republic of Serbia.

We addressed to the Republic’s Public Persecutor’s Office with notice for acting in accordance to alleged criminal charges in 2005.

In cooperation with Belgrade Center for Human Rights and Humanitarian Law Center we sent initiative to The Supreme Court of Serbia on November 26 and invited them to change and reconsider their legal decision made on February 10, 2004 which proclaims that right on compensation of non-material damage caused by non-legal detainment by authorities of the Republic the Serbia expires in 3 or 5 years. As explanation of its legal stand The Supreme Court specified that principle of responsibility on guilt basis could be applied only to direct perpetrator of criminal act and not to the state or legal person instead.

In this initiative we explained that we think that this is not about individual cases of non-legal acting of members of police forces (MUP RS), but consequence of general policy of the Republic of Serbia so the principle of responsibility of direct perpetrator wouldn’t be in accordance to law and justice. This is important, the most of all because The Supreme Court when it comes to damage compensation to the members of JNA took the stand that the State is responsible for the damage on guilt basis. We think that the law and justice are on the side of the refugees’ so we expect from The Supreme Court of Serbia, in accordance to basic legal rule that “equal cases must be conducted equally” will take the stand which will ensure that these people get financial compensation before the court as well as moral satisfaction for the suffering that they went through.

In 2005 we submitted the request to the People's Office of the President of Serbia regarding the determination of the fact who ordered the forcibly mobilization of the refugees. .

Same year, we submitted the notice to the Government of the Republic of Serbia regarding the determination of the fact who ordered the forcibly mobilization of the refugees. After two months we still didn't get the response.

Reaction of the State

Today, neither one court orders the financial compensation due to violation of freedom and human rights which took place in 1995 in regard to the stand of The Supreme Court from February 10, 2204.

Perpetuators from the cases submitted to the Prosecutor's Office were not found nor was their identity determined.

Taking in consideration regulations from Article 12 of UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment we demanded from the Prosecutor's Office to inform us about action they have take in order to "conduct independent investigation as soon as possible" as well as about possible rejection of criminal charges so those who have suffer could take over the case as subsidiary prosecutors, but the Prosecutor's Office never done that. If the Prosecutor's Office was willing to act according the submitted complaints, find the perpetrators and sentence them it would mean that these people can get the financial compensation through the litigation procedure considering the fact that according to the regulation from article 95 stand 3 of Basic Criminal Law, the criminal act with anticipated sentence of 5 years of detention, expires 10 years after the criminal act has been committed.

We reasonably doubt that authorities, first of all Ministry of Internal Affairs – Police Headquarters and competent Prosecutor's Offices also didn't want to work on these cases and in accordance to the orders "from the top" they did everything to hide identity of people who were responsible for these events. Also, we believe that since 2004 when all criminal charges were gathered and got joint number in the Republic Public Prosecutor's Office, this Office received large number of similar criminal charges which indicates that since June to October 1995 rights of these refugees were systematically violated.

Until today The Supreme Court did not act in regard to our initiative nor did it gave any response to the non-governmental organizations.

People's Office of the President of the Republic gave us response that they will take actions in order to help solving of our problems and that was all.

We did not get any response from the Government of the Republic of Serbia.

Present activities

Regarding the fact that most of these people were exposed to the torture at the battlefield we are now altering the existing charges for those who suffer from posttraumatic stress disorder (PTSD) due to fear experienced at the battlefield. However, there isn't a unique stand of municipal and district court on this issue. Getting compensation or rejection of the complaint explicitly depends on court of original jurisdiction, as well as possibility of alternation of the complaint. The way of acting on the complaint depends of district court as well.

Conclusion

The State never took even one step regarding this issue, at least to recognize that refugees were exposed to torture in 1995.

Financial compensation for the decreased life activity caused by PTSD means a lot to the persons who have been tortured and who suffer from the consequences even if it means that they have experienced enormous fear, insecurity and torture with consequences for the life time.

These people would also appreciate moral satisfaction from public recognition with or without financial compensation. That kind of state's approach to the problem would mean that this state has changed its policy, has regrets and publicly admits that it has caused enormous suffering for the refugees in the days when they have believed that they reached the safe place for themselves and their closest people.

28. Trafficking in human beings in Serbia

Analyses of available data regarding human trafficking victims' shows that following can be concluded about situation in Serbia²:

- Serbia is origin, transit and destination country for human trafficking victims;
- Number of **domestic victims** of human trafficking of all identified victims is in constant growth. In 2005 most of identified victims of human trafficking were domestic citizens (even 70%), and in the period 2006-2008 this number is even increasing (**73.9%**). Only during 2007 in **88%** of cases victims were citizens of Serbia;
- Parallel with the process of increasing number of domestic victims of human trafficking, we are tackling more present problem of **internal human trafficking**. In large number of cases (37%), human trafficking victims are domestic citizens that are being sold in our country, i.e. the entire process of human trafficking is conducted in the Republic of Serbia;
- Since 2004 **number of children** in human trafficking chain is increasing. While in the period 2002/2003 among identified victims there were 10% of children, during 2004/2005 number of children victims was 46.51% and in a period 2006-2008 44.93% of all identified victims were minors. In last few years, younger children, as

² For more detailed analyses please refer to ASTRA SOS Hotline statistics www.astra.org.rs

extremely vulnerable category, most often become a target for human traffickers. In such context, the average of age of minor victims of human trafficking is lower (approximately 13 years old) regarding previously obtained data;

- In 2004 **male victims** of human trafficking were identified for the first time;
- The number of **mentally challenged persons** identified as victims of human trafficking is increasing (28.6% in 2004.)³;
- While in 2001/2002 **recruitment** mostly took place through advertisements offering “excellently paid jobs in Western Europe to attractive girls, visa and work permit included”, typical for 2003/4 were alleged employment agencies and in 2005/6, increasing number of victims, in particular girls, were recruited through the Internet, SMS messaging and through tourist agencies (offering “au pair” jobs).
- During 2002, a great number of women were found in brothels in police raids, however, after the police action “Sabre”⁴ in 2005/6, this figure has declined to two-three girls per a raid, because traffickers shifted their business more undercover and **exploitation** is mostly done in the private apartments and houses.
- The number of proceedings for human trafficking for the purpose of labor exploitation is certainly smaller than for sexual exploitation.

| Data by the Agency for Coordination of Protection of Victims of Trafficking | | 2005 | 2006 | 2007 |
|--|--------|------|------|------|
| Total number of identified trafficking victims (with potential victims) ⁵ | | 53 | 56 | 60 |
| Citizens of the Republic of Serbia | | 32 | 41 | 48 |
| Foreign nationals | | 21 | 15 | 12 |
| Adult trafficking victims | | 42 | 23 | 34 |
| Minor trafficking victims | | 11 | 33 | 26 |
| Gender | Female | 53 | 54 | 51 |
| | Male | 0 | 2 | 9 |
| Data by ASTRA SOS Hotline | | 2005 | 2006 | 2007 |
| Total number of identified trafficking victims | | 59 | 44 | 25 |
| Citizens of the Republic of Serbia | | 37 | 28 | 22 |
| Foreign nationals | | 22 | 15 | 3 |
| Adult trafficking victims | | 38 | 24 | 15 |
| Minor trafficking victims | | 18 | 20 | 10 |
| Gender | Female | 58 | 37 | 24 |
| | Male | 1 | 7 | 1 |
| Data by the Shelter for Trafficking Victims | | 2005 | 2006 | 2007 |
| Number of Shelter clients | | 54 | 31 | 18 |

³ Second Annual Report on Victims of Trafficking in South Eastern Europe 2005, Regional Clearing Point

⁴ The police operation pursued in 2003 during the state of emergency introduced after the assassination of Prime Minister Zoran Đinić.

⁵ Agency’s criterion for distinguishing between potential and identified trafficking victims is not clear, as well as the criterion for providing assistance.

Table 1.

In 2006, there were 37 police compliances against 84 persons charged for trafficking in human beings which is 34 more than in 2005. 11 of them were found guilty as charged and were convinced from 3 to 8 years of prison.

| No. of police compliances for THB for adults (comparative data of Ministry of Interior and State Statistics Agency) | | | Convictions of adults for THB | |
|---|-----------------|----------------|----------------------------------|-------------------|
| Source | MoI of Serbia | | Statistics Agency | Statistics Agency |
| Year | Article 111b | Article 388 | | |
| 2003 | 9 | / | 10 | / |
| 2004 | 61 | / | 69 | 2 |
| 2005 | 47 | / | 68 | 10 |
| 2006 | / | 37 | 50 | 13 |
| 2007 | / | 28 | / | / |
| Total | 117* | 65 | 197 | 25 |

Table 2.⁶

| Year | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | Total |
|---------------------------|-----------|-----------|-----------|-----------|-----------|------|------------|
| Serbia | | | 16 | 23 | 24 | | 63 |
| Romania | 32 | 15 | 7 | 3 | 1 | | 58 |
| Moldova | 13 | 18 | 4 | 8 | 2 | | 45 |
| Ukraine | 10 | 8 | 10 | 6 | 1 | | 35 |
| Russia | 4 | 1 | | 1 | | | 6 |
| Bulgaria | 1 | | 1 | 1 | 1 | | 4 |
| Bosnia and Herzegovina | | 1 | | | 2 | | 3 |
| Georgia | | | 2 | | | | 2 |
| Albania | | | 1 | | 1 | | 2 |
| Croatia | | | 1 | 1 | | | 2 |
| Iraq | | | 1 | | | | 1 |
| Congo | | | | 1 | | | 1 |
| FRY Macedonia | | | | | 1 | | 1 |
| China | | | | | | | |
| Total sheltered | 60 | 43 | 43 | 44 | 33 | | 223 |

Table 3. No. And citizenship of victims of trafficking identified by police and accommodated in the shelter

| Traffickers filed by | Male | Female | Total |
|----------------------|------|--------|-------|
|----------------------|------|--------|-------|

⁶ MoI Serbia note: Total number of compliance is 117 among which 52 for trafficking in human beings and the rest for smuggling. ASTRA note: For better illustration we presented MoI data for the period 2003-2007 (from 2003-2005 the valid was article 111b which was not divided trafficking and smuggling and from 1st January the valid is article Trafficking in human beings which is divided from the article 350 Smuggling in people in Criminal Code of Serbia)

| | | | |
|------------------------------|-----------|----------|-----------|
| police on article 388 | | | |
| Serbia | 48 | 8 | 56 |
| Jordan | 1 | / | 1 |
| Total | 49 | 8 | 57 |

Table 4: No. and citizenship of the traffickers

Anti trafficking activities

In seven years following the ratification of the UN Convention against Transnational Organized Crime and Protocols hereto⁷, a number of activities have been carried out in Serbia by both international and national governmental and nongovernmental organizations, bringing about positive changes in the field of combating trafficking in women. **In 2001 and 2002**, NGOs launched the first media campaigns, the first shelter and SOS hotline for trafficked survivors were started by NGOs and the first education programs for the GO sector were initiated. Also, the National Team for Combating Human Trafficking was established, composed of government institutions, NGOs and international organizations. In April **2003**, article 111b Trafficking in human beings was introduced as a criminal offence into the Criminal Law of the Republic of Serbia. In **2004** the Agency for Co-ordination of Protection of Trafficking Victims was set up within the Ministry of Labour, Employment and Social Policy, as well as the Governmental Anti-Trafficking Council. In **2005**, we saw the first key trials to the organizers and perpetrators of trafficking in women (TIW). On January 1, **2006**, the new Criminal Code of the Republic of Serbia came into effect, introducing article 388 and some novelties into the definition and penalties for human trafficking and distinguishing this offence from people smuggling. In December 2006 National Strategy for combating trafficking in human beings was adopted.

Problems and challenges

Beside obvious progress in suppressing human trafficking, we should also point out to omissions, problems and task that should be worked on in the following period in order to make fight against human trafficking more efficient.

- The Republic of Serbia still has not adopted National Action Plan for combating human trafficking;
- Taking into effect new Criminal Code, we made significant step forward in regard to defining human trafficking and separation of criminal act in the article 350 *Illicit crossing of state border and people smuggling* (by which clear distinction is made between these two acts), as well as including criminal act in the article 389 *Trafficking in children for adoption*. The new Code, however, generally brings lower penalty policies which can also be seen in criminal act Human Trafficking, where penalty for trafficking in children regulated in article 388 paragraph 3 is decreased from minimum five to minimum three years of imprisonment. This is particularly considerable bearing in mind increase of number of children involved in human trafficking. A chief criminalization requirement relates to establishing as criminal offences the intentionally committed conducts set forth in Article 3 of the Protocol. As a respond to its obligation under the *Protocol*, Serbia has included in its Criminal

⁷ Official Gazette of FRY – International Contracts, no.6, 26 June 2001

Code a crime of trafficking in persons. Article 388, which has been drafted after the *Protocol*, envisages the following:

Article 388

Trafficking in persons

1) Whoever, by force or threat, deceiving or keeping in deception, by abusing authority, confidence, dependency, another's difficult conditions, or by withholding identity documents or giving or receiving payments or other benefit, recruits, transports, transfers, delivers, sells, purchases, mediates in the purchase, harbours or holds another person, for the purpose of exploitation of their labor, forced labor, pursuing a criminal activity, prostitution or other form of sexual exploitation, vagrancy, using for pornographic purposes, placing in slavery or in similar status, or for the removal of organs or body parts or using in armed conflicts, shall be punished by imprisonment for two to ten years.

(2) If the criminal offense referred to in paragraph 1 of this Article is committed against a juvenile, the perpetrator shall be punished by the punishment envisaged for this offense even if no force, threat or any other envisaged act for perpetrating this criminal offense has been used.

(3) If the criminal offense referred to in paragraph 1 of this Article is committed against a juvenile, the perpetrator shall be punished by imprisonment for not less than three years.

(4) If the perpetration of criminal offense referred to in paragraph 1 and 3 of this Article, resulted in a serious bodily injury of a person, the perpetrator shall be punished by imprisonment for three to fifteen years.

(5) If the perpetration of criminal offense referred to in paragraph 1 and 3 of this Article, resulted in death of one or more persons, the perpetrator shall be punished by imprisonment for not less than ten years.

(6) Whoever engages in committing criminal offence referred to in paragraph 1 to 3 of this Article or if the offence is committed by an organized group, the perpetrator shall be punished by imprisonment for not less than five years.

The approach of the Serbian legislature concedes in many aspects with the UN standards. However, criminalization of trafficking in human beings suffers from some shortcomings. The major inconformity of Article 388 with the UN standards refers to

- (a) its failure to state explicitly that the consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph that criminalizes trafficking in human beings have been used, which is a request established in the Article 3 (b) of the *Protocol*.
- (b) The fact that the statutory text fails to refer to abduction and fraud as the means necessary to the crime, which has also been means necessary to the offense established in the *Protocol*. Note that the previously valid law recognized abduction as the mean necessary for the crime. (Article 111b of the previously valid Fundamental Criminal Code of the Republic of Serbia).

In addition, although not specifically required by the *Protocol*, we find that the present law has made a step back in criminalizing trafficking in human beings in comparison with the previously valid law when it omitted to refer to the following situations:

- (a) First, the Serbian Criminal Code does not envisage as an aggravating circumstance where a public official in the performance of his or her legal duties committed the trafficking. If the perpetrator is of such characteristic, then he or she can be criminally liable for an ordinary crime defined in Article 388 (1), which means that more severe punishment may be imposed only in the presence of some of the above-mentioned aggravated circumstances. However, the previously valid Fundamental Criminal Code regarded as an aggravating circumstance where a public official in the performance of their professional duties committed the trafficking. {Article 111b (2)}; and
- (b) Second, neither the law regards as aggravating circumstances where the trafficking endangered the victim's life deliberately or by gross negligence. Yet, like in the former case, the previously valid law had regarded as aggravating circumstances where the trafficking was committed in a very cruel or degrading manner, where the first might have amounted to "endangering the life". {Article 111b (2) of the previously valid Fundamental Criminal Code}. The present law does not envisage such a possibility.
- (c) In assessing proportionality of this sanctions, it is important to note that in the present law the legislature has reduced the statutory minimum of the sentence of imprisonment that could be imposed on the perpetrator if the trafficking was committed against a juvenile, from 5 to 3 years. (Article 111b of the previously valid Fundamental Criminal Code envisaged that in such cases the perpetrator could have been punished by imprisonment not exceeding 5 years.) On the other hand, the new law has increased the maximum penalty that can be imposed in such a case - from 15 to 20 years.

Having in mind that the usual purpose of trafficking in children is illegal adoption and that the main crime of trafficking in human beings does not embrace trafficking in children for the purpose of adoption, the Serbian legislature found appropriate to incriminate a separate offense of trafficking in children for the purpose of adoption. Consider now the contents of Article 389:

Trafficking in Children for the Purpose of Adoption

Article 389

(1) Whoever takes a person who has not turned 14 away for the purpose of adoption contrary to valid regulations or whoever adopts such a person or mediates in such an adoption, or whoever for that purpose purchases, sells or delivers another person who has not turned 14, or transports, provides accommodation or harbors such a person, shall be punished by imprisonment for one to five years.

(2) Whoever engages in acts referred to in paragraph 1 of this Article or if the offence has been committed in an organized manner by several persons, shall be punished by imprisonment for not less than three years.

The first thing to be noticed is a discrepancy between the usage of the term “child” in the Serbian Criminal Code and the relevant international instruments regarding child protection.

Thus, the Serbian Criminal Code employs

- the term “child” for any person bellow 14;
- the term “minor” for any person who turned 14 but is bellow the age of 18.
- the term “juvenile” for any person bellow the age of 18⁸,

However, the relevant international treaties use the term “child” for any person bellow the age of 18 years. The discrepancy is a substantial and unfounded. The result is that a large group of persons that have been given international protection against illegal adoption, that is persons between the age of 14 and 18 years, do not enjoy the same protection under the Serbian law. Although persons bellow 14 are the usual victims of the trafficking for illegal adoption, the older children have been abducted for that reason, as well. Therefore, they should be given the same protection under the law.⁹

- National team for combating human trafficking is good example of cooperation between governmental, nongovernmental and international organizations (mostly as observers), but unfortunately it still functions without clear procedures and rule. Up to date this team has no joint actions conducted in anti-trafficking field. Members of National team have no precisely defined roles, and consequently no responsibility. The entire communication between team members is informal. All activities in Serbia in fighting human trafficking were conducted thanks to international donations and foreign governments, and through the work of non-governmental organizations (Shelters, SOS Hotline, media campaigns, most of educations) or through the work of institutions, in a form of additional educations, study visits or technical equipment (first of all of the police). In the state budget of the Republic of Serbia, no means are envisaged for suppression of human trafficking.¹⁰. Since January 2008, National team of the Republic of Serbia has no coordinator, as former coordinator is retired and new one was not appointed.
- What could be observed is that from 2005 the police shifted their focus from human trafficking cases to the cases of people smuggling and illegal migrations.
- Penalty policy for criminal act of human trafficking, with few exceptions, is very light. During 2005 only few larger trials were accomplished, but unfortunately main organizers of this “business” from Serbia (but also from the region) are still free and/or in escape. The connection between corruption of the representatives of state officials and human trafficking in concrete cases was never investigated or didn’t have an epilogue. Presentation of evidence in this criminal act still in the most part relies to witnesses and their testimonies. As a new problem, citizens’ proceedings in compensations for damage are occurring in trials. As it is practice in Serbia not to bring decision regarding the compensation during the trial for criminal act, the court refers witnesses/victims to realize their right to compensation through civil suit,

⁸ See Article 112 (8) (9) and (10) of the Serbian Criminal Code.

⁹ See e.g. Article 236 of the German Criminal Code.

¹⁰ Law on budget of the Republic of Serbia, Official Gazette RS No. 123/2007, 58/2007, 106/2005, 108/2005 - correction., 85/2006 and 86/2006 - correction., 127/2004 and 66/2005, 33/2004 and 115/2004, 86/2002 and 35/2003, 74/2001, 35/2002 and 86/2002, 21/2001 and 27/2001 - correction.)

which always last for a long time, requires the presence of the victims and understands huge costs (for taxes, engagement of lawyer. etc). Problem is bigger when it comes to foreign victims who were witnesses in criminal proceedings in Serbia, and than were repatriated into their country of origin. If they want to realize their right to compensation, they have additional expenses for travel and lodgment. Their security while returning in country in which they testified against trafficker(s) and the possibility to meet trafficker(s) open new questions. The existing educations for judges and prosecutors should be continued, but we should also consider involving litigation judges in those educations, n order to bring re-victimization of human trafficking victims to minimum.

- In case of minor girl – ASTRA case 1610 (Kž 1432.07), the Supreme Court of Serbia in Belgrade altered the judgment against the accused for human trafficking (Article 388, Paragraph 3 in connection with paragraph 1 of the Criminal Code) made by the Sombor District Court; the punishment was the only altered part of the judgment, and this only in part of unified prison sentences and not prison sentences for individual offences. More specifically, victim’s aunt M.I. who trafficked her was sentenced to 3 years and 10 months in prison for human trafficking (Article 388, Paragraph 3 in connection with Paragraph 1, CC RS) and to 2 years in prison for abduction (Article 134, Paragraph 1 in co-perpetration in connection with Article 33, CC RS), that is, unified prison sentence of 4 years and 6 month. The other accused J.Z. was sentenced to 2 years in prison for human trafficking (Article 388, Paragraph 2 in connection with Paragraph 1, CC RS) and to 1 year and 6 months in prison for abduction (Article 134, Paragraph 1 in co-perpetration in connection with Article 33, CC RS), that is, unified prison sentence of 2 years and 6 month. Originally, the Sombor District Court sentenced M.I. to unified prison sentence of 5 years and 6 months and J.Z. to unified prison sentence of 3 years and 2 months.
 - There are a few notorious Serbian traffickers in the region. One of them is Mladen Dalmacija who was tried in absence and in 2005 convicted with a final decision and sentenced by the Special Court for Organized Crime to 8 years in prison. This judgment is final and this is the highest punishment ever pronounced in Serbia for human trafficking. However, the Criminal Procedure Act of the Republic of Serbia stipulates in Articles 304, 407 and 413 that a person convicted in absence may ask for the new trial.
 - We should certainly mention the case of Milivoje Zarubica who was convicted with a final decision and sentenced to 4 years and 6 months in 2006. However, until today this judgment has not been executed and he is still free, ASTRA and the police are in contact with clients who were recruited by this man after he had been convicted.
-
- Largest number of non-governmental organizations, but also certain number of the representatives of governmental sector participates in preventive activities. Representatives of government institutions gladly participate in such projects (as participants or lecturers). But, there is no systematic support for the preventive activities. When identifying the main obstacles to effective TIW prevention in Serbia, we need to speak about the lack of commitment on the side of government to tackle the issues of prevention in a more systematic way, because this is the only strategy

that gives results in the long run. Unfortunately, up to date there is no evaluation conducted in order to estimate real efficiency of such activities and how should they be conducted in the future. The main efforts for the design and implementation of such programs still rest on the informal sector.

- Although with establishing Agency for Coordination of Protection of Human Trafficking Victims (in 2004)¹¹ made significant progress, the fact is that direct assistance (medical, legal, psychological...) is so far provided only by three non-governmental organizations and IOM (through repatriation and by supporting one shelter). Unfortunately, in Serbia there is no protocol for treating victims of human trafficking, procedures are not very clear, and large number of representatives of institutions is not aware of the work of the Agency, nor its competences. Practice shows that in the Republic of Serbia identification of human trafficking victims is still conducted by the police, while the Agency only confirms this primary identification. There are cases of pressure, direct or indirect, on human trafficking victims to testify in court procedures. The period of reflexion most usually is not respected, and estimation of security, i.e. endanger of victims, is not conducted (or the victims are only placed in shelter of closed type). Also, it is very important to conduct evaluation and estimation of the quality of assistances offered to human trafficking victims by governmental as well as by non-governmental and international organizations. In the future it is necessary to work on the augmentation of quantity of assistances offered to victims, but also on improvement of quality of existing ones.
- In Serbia, there is no unique database of victims of human trafficking and assistances that are provided to them. The Agency has database in which they keep records in victims they have been in contact since their establishment. Their methods of protection of data and criteria for availability to public, experts, scientific workers, interested parties and victims themselves, or the prevention of abuse of those data are not clear.¹²
- In Serbia there are no particular programs or measures for treating children victims of trafficking. They have the same assistances as adults, they are in the same shelters and they are treated the same.
- Reintegration and re-socialization of human trafficking victims are an urgent problem. Victims are mostly offered language courses, computer courses and similar, but more systematic, and long-term programs are still omitted. The lack of information after the repatriation of victims in their country of origin and of success of re-socialization there is present. This segment demands urgent and more efficiently organized involvement of social protection system and creation of special programs within.
- In order to fight successfully against this specific form of violence, it is necessary that State works systematically on eradication of poverty. We also have to be conscious that human trafficking would not be so much present if there was no corruption. For these reasons, facing basic causes that lead to human trafficking, i.e. poverty, unequal situation of women and still present violence against them, corruption and organized crime, are priorities in repressing human trafficking.

¹¹ The Agency was financially supported by OSCE until 01.07.2005. After this period, the financing should have been conducted by State, which unfortunately did not occur

¹² Law on protection of personal data, "Official Gazette FRY", No. 24/98 and 26/98.

- Since 2004 it is noticed that government institutions are closing the cooperation with NGOs dealing with human trafficking. This can be particularly seen in cooperation with the police and the Agency for coordination of protection of human trafficking victims. NGOs are expected to provide and report to institutions but there are no feedback data.
- The fact that non-governmental organizations working on repression of human trafficking in Serbia are going through a specific crisis is indisputable, as well as the fact that they should be supported and strengthened to persevere in their independency, to give objective and critical look to a situation. This is of key importance, as NGOs will be responsible in the future, when Serbia becomes a country that fully respects international standards, to monitor the respect of human rights and to work on their constant improvement. Without strong and developed civil society, we can not talk about democratic state as a guarantee for human rights.

What worries us the most, as a non-governmental organization, is declarative call to respect human rights of human trafficking victims. Practice shows us that their human rights are violated even after they exit the chain. After the progress (in 2002 and 2003) in treating human trafficking victims, we are facing again examples when this problem is treated as illegal migrations, people smuggling or disturbing public peace and order. Here we have in mind work of governmental, non-governmental and international organizations/institutions. For these reasons general education of all actors working on human trafficking problem in Serbia, on human rights, on guaranteed international conventions is essential for quality in future work.

29.

Remand prisoners: Regarding the repeated offence to the penitentiary no particular attention is given in terms of that the repeated offence to the penitentiary is not only the total number of recommitted crimes, but the set of causally advised internal and external changes related of the imprisoned.

In order to accomplish the basic aim of the Law on execution of penal sanctions the systematic activities should be pre-arranged to assist the prisoners in returning to free society after release. Although there is no legal act concerning this matter, it is not being distinguished as a specific, very important section in the process of re-socialization and prevention of repeated offence to the penitentiary. Every change, even if it is getting much better, is a stress due to the adaptation to a new way of living which is convenient for the prisoner who spent a long period of time in penitentiary conditions being away from a family and usual surrounding.

Other

33.

Violations of Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

I – Introduction

During Slobodan Milošević's regime members of the Serbian police and army often unlawfully arrested and ill-treated Serbian nationals or nationals of neighbouring States who had sought refuge in Serbia because of their ethnicity, political beliefs or mobilisation.¹³ Democratic changes were not accompanied by the necessary reform of the police and the establishment of the responsibility of those who violated human rights during the 1990s.¹⁴ In view of the practice of impunity in Serbia and fearing the retaliation from the perpetrators, the victims of torture and other cruel, inhuman or degrading treatment and punishment rather reluctantly demand from the State to be compensated for the injustice they suffered at the hands of state agents. Those who do decide to turn to court in order to exercise their right to reparations come across a serious obstruction on the part of the State which arises from a binding legal opinion of the Supreme Court of Serbia of February 2004 about the statute of limitations applicable to the right of victims of torture and other gross violations of human rights to claim compensation from the State.

II – The normative framework

The responsibility of the State for the consequences of unlawful acts [legal term – damages] committed by state agents is prescribed by the Constitution of the Republic of Serbia and the Law on Contracts and Torts (LCT).

Constitution of the Republic of Serbia¹⁵

Article 35

Any person deprived of liberty, detained or convicted for a criminal offence without grounds or unlawfully shall have the right to rehabilitation and compensation of damage by the Republic of Serbia as well as other rights stipulated by law.

Everyone shall have the right to compensation of material and non-material damage inflicted on him by unlawful or irregular work of a state body, entities exercising public powers, bodies of the autonomous province or local self-government.

The law shall stipulate conditions under which the injured party may demand compensation for damage directly from the person that inflicted the damage.

Law on Contracts and Torts¹⁶ (Unofficial translation)

Article 172

- (1) The legal person shall be responsible for the damage inflicted by its organ on a third person during the performance or in relation to the performance of its duties.
- (2) Unless in a particular case the law prescribes otherwise, the legal person shall be entitled to compensation from the person responsible for the damage inflicted intentionally or through gross negligence.
- (3) This right shall be subject to the statute of limitations six months after the date when the damages were paid.

¹ *Human Rights in Serbia 1991-95*, HLC; *Human Rights in FR Yugoslavia, 1999 Report*; HLC;

Human Rights Watch Website: http://www.hrw.org/reports/1996/wr96/Helsinki-22.htm#1144_239300# ;

Human Rights Watch Website: <http://www.hrw.org/wr2k/Eca-26.htm>;

² *Transitional Justice in Post – Yugoslav Countries, Report for 2006*, HLC, Research and Documentation Centre and Documenta; *Transitional Justice Report, Serbia, Montenegro and Kosovo, 1999-2005*. HLC

¹⁵ *The Official Gazette of RS*, No. 98, 10 November 2006

¹⁶ *The Official Gazette of SFRY*, Nos. 29/78, 39/85, 57/89 i 31/93;

LCT prescribes the legal time limit within which the victim of torture can sue an individual or the State for the torture suffered at the hands of a state agent. The time limit concerning the right to file a suit for the “harm” caused by the crime of lawsuit is much longer and depends on the gravity of the crime.

Article 376

- (1) The statute of limitations for compensation claims shall start to run three years after the date when the claimant learned of the damage and the person who inflicted the damage.
- (2) Whatever the case, the statute of limitations for this claim shall expire five years after the damage was inflicted.
- (3) The statute of limitations for the compensation claim for the damage caused by the breach of a contractual obligation shall be equal to the statute of limitations prescribed for that obligation.

Article 377

- (1) When the damage is inflicted during the commission of a crime, and a longer time limit is prescribed for the criminal prosecution, the statute of limitations for the compensation claim filed against the person responsible shall expire on the date of the expiration of the time limit prescribed for the criminal prosecution.
- (2) The termination of the criminal statute of limitations shall entail the termination of the statute of limitations for compensation claims.

The Resolution of the UN General Assembly on *The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* also speaks about the right of the victims of torture and other grave violations of human rights to reparation and time limitations applicable to this right.¹⁷:

IV The Statute of limitations

6. When so envisaged by the applicable treaty or is an integral part of other international legal obligations, the provisions on the statute of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law, classified as crimes by international law.
7. Domestic provisions on the statutes of limitations for other types of offences which are not classified as crimes by international law, including the statute of limitations provisions applicable to claims and other proceedings may not be unduly restrictive.

III – Legal opinion of the Civil Law Department of the Supreme Court of Serbia concerning the statute of limitations applicable to the right to claim damages

On 10 February 2004 the Civil Law Department of the Supreme Court of Serbia (SCS) adopted the legal opinion regarding the time limits for claims which drastically impaired the status of the victims of torture and other violations of human rights committed by police or army members. The adoption of this legal view was preceded by a large number of compensation suits filed by forcibly mobilised refugees against the Republic of Serbia.¹⁸ The SCS held that “(...) pursuant to Article 377 of the Law on Contracts and

¹⁷ Adopted at the 64th Plenary Session of 16 December 2005.

¹⁸ In June and August 1995 members of the Ministry of the Interior of Serbia systematically and unlawfully arrested Serb refugees – men of military age who had fled with their families to Serbia from the so-called Republic of Serb Krajina [Serb-controlled territory in the Republic of Croatia] following Operation Storm of the Croatian Army. The police used the files of the Red Cross and the Commissariat for Refugees of the Republic of Serbia to enter collective and reception centres and threaten and ill-treat the

Torts the statute of limitations for damage claims applies only to the perpetrator of the crime who caused the damage and not to the State, i.e. the legal person held vicariously responsible for the harm done under the provisions of Article 172 of the Law on Contracts and Torts and therefore the periods of limitation shall be as prescribed in the provisions of Article 376 of the Law on Contracts and Torts.”

Before the SCS pronounced this questionable position in February 2004 the courts applied directly the provision of Article 377 prescribing unequivocally that the right to claim damages against the responsible person [without distinguishing between the physical and the legal person!] expires after the same time limit as that prescribed for criminal prosecution.

In spite of the clear and strict provisions of the Constitution and the LCT, let alone the international standards for the protection of the victims of gross human rights violations, by adopting this binding interpretation of Article 377 of the LCT the SCS *de facto* deprived the victims of torture and other human rights violations committed by the police of their right to claim damages. It chose to ignore the specific social context in which during Slobodan Milošević's regime violations of human rights took place and the fact that these violations constituted serious crimes committed by state agents in the course of their regular duties as well as in disregard of the fact that these were not just occasional, arbitrary and isolated acts of state agents. The State as such cannot perform any act and always does it through its agents, such as the police and the military.

Particularly disturbing is the fact that the SCS by adopting this legal opinion in February 2004 drastically changed the view it held in December 1999 concerning the damages for the former members of the Yugoslav People's Army (JNA) who suffered «harm» in conflicts with the armed forces of the republics of the former Yugoslavia. Namely, on 27 December 1999 the SCS held that the State was responsible for the harm caused by the crime of the armed rebellion of the members of the armed forces of the seceded republics [in armed conflicts with the JNA], and that the claims could be filed within the time limit prescribed in Article 377, para. 1 of the LCT! In other words, in the case of damages due to JNA members the court held that the limitations envisaged in Article 377, para. 1 should apply even though the crimes concerned were committed by individuals who did not act in the capacity of state agents! It turns out that in December 1999 and February 2004 the SCS, in situations which were, legally speaking, almost identical [facts and arguments in a case under the consideration of the court in 2004 are even clearer and

arrested before their families. They were arrested in the street, in public transport, green markets etc. The police had no arrest warrants and never informed the arrested of the reasons for their arrest. Back in police stations they took their fingerprints and photographed them. From police stations the refugees were taken under armed escort either directly to the frontline or to the so-called training camp in Erdut [Republic of Croatia] controlled by a paramilitary unit called the Serb Volunteer Guard (SDG). During the “training” Guard members subjected them to torture and inhuman treatment. After a short training period they were sent to the front and made to join units of the Army of the Republic of Serb Krajina and the Army of Republika Srpska. It is estimated that over 5000 men were mobilised forcibly. It has not been established yet how many of the forcibly mobilised were killed or went missing. The majority of those who survived suffer from serious physical and mental consequences.

more in favour of the application of longer time limits] applied completely opposite legal logic and accorded preference to JNA members over the victims of unlawful acts of the Serbian police and army. In this manner the SCS grossly violated one of the fundamental legal principles – the right to equality before law.

The chances of a victim of torture to exercise the right to reparation following this questionable position of the SCS are best illustrated by the fact that the victims of torture and other gross violations of human rights can claim damages only from individuals who actually perpetrated the crimes, i.e. concrete policemen or soldiers, which is well-nigh impossible for several reasons. Namely, in torture cases, due to various circumstances, the victims were unable to identify the perpetrators. Moreover, the perpetrators of these crimes still work for state institutions and in some cases have even been promoted¹⁹, so that the victims are justifiably afraid to press charges against them.

The case of Antun Silađev

In September 1991 Antun Silađev and Mato Horvat, Croats from Vojvodina, worked at the pump station next to Bogojevac Bridge in the immediate vicinity of the Serbian-Croatian border. They worked for the state water supply company *Zapadna Bačka*. The nature of their job required their round-the-clock presence at the pump station so that they spent their nights there too. During the night of 29/30 September 1991 Silađev was roused from sleep by a voice outside calling him by his name. He went out and saw two JNA members whom he did not know. One of them fired at him from an automatic rifle and hit him in the stomach. Silađev fell under the force of the blow and the two JNA members started to kick him, uttering curses and threats. The beating went on for several minutes when a third soldier appeared. Then they dragged him to an army vehicle some 400 metres away. They fetched up at a hangar but the victim does not know its location. Silađev remembers that he saw a largish group of JNA troops in front of the hangar and heard the individual who shot him and an officer arguing. During this altercation, while Silađev was lying on the ground, a JNA member whom he had not seen before kicked him in the head and he fainted. The next thing he remembers is that he regained consciousness in an army vehicle and that they brought him to a room, presumably in an army medical unit. From there he was taken to the hospital in Sombor where he stayed 29 days; of them, 12 days in intensive care. Antun Silađev's leg is now 7 cm shorter and he is still suffering from other physical and mental problems as a consequence of the torture.

In November 2005 HLC filed a compensation suit on behalf of Antun Silađev with the First Municipal Court in Belgrade against the State Union of Serbia and Montenegro. In its judgment of 26 January 2007 the First Municipal Court dismissed the claim and in its reasoned opinion referred precisely to the questionable SCS interpretation of Article 377 of the Law on Contracts and Torts. The reasoned opinion states, among other things, that

¹⁹ "Humanitarian Law Center Requests Prime Minister to Dismiss Mileta Novakovic", HLC 30 June 2006; *Transitional Justice in Post – Yugoslav Countries, Report for 2006*, HLC, Research and Documentation Centre and Documenta; *Transitional Justice Report, Serbia, Montenegro and Kosovo, 1999-2005*. HLC

“...the privileged statute of limitations envisaged by the, LCT, Article 377 can apply only to the perpetrator of the crime but not to a person held accountable according to the rules of vicarious responsibility.”

On 24 November 2004 the Humanitarian Law Centre, International Aid Network (IAN) and the Belgrade Centre for Human Rights submitted to the SCS the Initiative to Amend This Legal Interpretation. Until September 2008 the SCS did not include this initiative in its deliberations.

Regarding your request for cooperation in relation to shadow report, as well as to temporary problems and situation concerning torture cases, Committee for Human Rights in Leskovac according to their experiences and cases in procedure would like to inform you that the Republic of Serbia is facing the basic problem regarding torture issues. The Republic of Serbia has ratified UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and European Convention on Human Rights and Fundamental Freedom but does not apply them in practice, on the contrary, judicial system, prosecutor's office, police department and other authorities, violates them without fear that they could be responsible. The fact that is more concerning is that judges, prosecutors, police authorities are not acquainted with UN and European Council's instruments regarding torture and very often they are not familiar with the term and the essence of torture according to UN Convention Against Torture and Yulia Babuzina, representative of the UN Committee Against Torture determined it with concern during her visit to CDF (Correction and Detention Facilities) in Nis on September 8, 2008. Intellectual blindness in Serbian Association of Doctors in Ministry of Health is particularly concerning fact because they didn't find necessary to include regulations of article 10 of UN Convention Against Torture, regulations of Tokyo Declaration and WHO Resolution on Human Rights which forbid participation of health workers and medical doctors in torture cases and covering of those cases in health legislature. Also, there aren't anticipated sanctions for health workers and medical doctors who participate in torture cases as well as in covering of those cases according to Article 6 and Article 8 stand 2 of Code of behavior of persons who administer the law so the doctors usually don't give the examination reports about injuries to the torture victims in time, trying to talk them out of taking these reports and persecution of the police officers who have abused and torture them. In health institution within Correction and Detention Facilities in Nis there are about 40 clients who were victims of torture and abuse or other inhuman and degrading treatment and punishment. Due to negligence of the health workers in this institution, it became the nest of resistant tuberculosis, infectious hepatitis, etc. Inadequate medical care and treatment were the reason of death for two detainees, torture victims in last two years: Stefanovic Milan from Jagodina JMBGj6258/A3 and Nikolic Nenad from Nis JMBG 6001. One detainee hanged himself in solitary cell, another set himself on fire in solitary cell during the night between 4th and 5th September in Correction and Detention Facilities in Nis, one detainee known as "Edi", previously detained in Sremska Mitrovica, died in pavilion C-I under unexplained circumstances.

Other issues

Report on situation in special psychiatric hospitals in Serbia

There are five special psychiatric hospitals (“specijalna psihijatrijska bolnica” – SPB) in Serbia: SPB “Gornja Toponica” in Niš, SPB “Slavoljub Bakalović” in Vršac, SPB “Sveti vrači” in Novi Kneževac, SPB “Kovin” in Kovin, and Institut for neuropsychiatric diseases “Dr Laza Lazarević” in Belgrade. Within the health care system they are positioned on the secondary health care level, and they are not part of the regional institutions, which means that they are admitting the patients from all over the country.

These institutions generally function as asylums: they are located in a large distance from urban areas, they in general provide long-term hospitalisations (sometimes lasting for decades), residential conditions in them are extremely inadequate, there is no proper psychosocial rehabilitation programs (i.e. psychiatric treatment is reduced to pharmacotherapy), and there are often reports of abuse, torture, or even murder. There were several reports published recently on situation in psychiatric hospitals (Helsinki Committee for Human Rights in Serbia: “The People on The Margins of Society-Human Rights in Psychiatric Institutions“, February 2007.; MDRI: “Torment not Treatment-Serbia's Segregation and Abuse of Children and Adults with Disabilities, November 2007.), but the Government responded only by claims that these reports are politically motivated and, in our view, did not do anything to improve conditions in these hospitals. In this report we want to underlie the fact that Serbian government in the last several years did not adequately respond to the situation in these hospitals and did not actively develop mechanisms for prevention of cases of torture and protection of human rights of mentally ill.

1. Reforms of the mental health care system

Prior to 2003 there was no mention of reforms of mental health system or a system of health care in general. Ministry of Health Tomica Milosavljević (who is currently again in the position of the Minister of Health all the way since 2002 – except for short periods of time), established a National Committee for Mental Health (NCMH) in January 2003, with the mandate to organize reforms in the country. This body consists of ten psychiatrists from different parts of the country, but no other professionals are included.

NCMH was also responsible for implementation of South East Europe Mental Health Project “Enhancing social cohesion through Strengthening Community Mental Health Services in South Eastern Europe”²⁰, in Serbia. The overall aim of the Project was initiation of mental health reforms in 8 countries of Stability Pact. Tasks were: 1. assessment of overall situation in mental health system, 2. producing the mental health policy and action plan, 3. writing a new legislation on protection of rights of mentally ill, 4. endorsement of these documents within the government and in a parliament, 5.

²⁰ <http://www.seemhp.ba/>

establishment of the pilot community mental health centre (CMHC). Of these tasks, NCMH has produced National Mental Health Policy and Action Plan which was sent to the Ministry of Health in 2004 but was adopted by the Government only in January 2007 (during one of these short periods when Prof Milosavljević was not Minister of Health)²¹. Law on protection of individuals with mental health disorders is drafted and sent to Ministry, but is still not submitted to the Parliament for adoption. Pilot CMHC has been established in municipality Mediana in Niš, and this centre was one of the best within the Stability Pact project, until protests within the “Gornja Toponica” hospital organised by opponents of reforms resulted in Minister Milosavljević’s decision to dispose current director. Current situation in the centre is difficult and this first community mental health service is under threat (details will be elaborated further).

Despite of adoption of Mental health policy, and signature on several international documents that are supporting development of community mental health care and protection of human rights of mentally ill (including Helsinki charter and XXX) , Ministry of Health did not initiate any action toward that goal so far: a) there is no elaborated action plan for restructuration of services, nor definition of resources for that task (which makes national policy completely irrelevant – just another document on the paper for presentation to international community); b) there is no any effort on the side of the Ministry to establish more community mental health centres, despite of interest of mental health professionals and NGOs; c) there is no adequate support either to existing pilot CMHC “Mediana” in Niš, nor support for other projects that are implemented in this field (examples are IAN’s project on intersectorial collaboration in South Serbia region and Caritas Italiana EC funded project on self-help groups), and d) despite the proclaimed support for development of community mental health care services, the Government is actually planning to rebuild existing hospitals with fund of 12 (twelve) million euros (which will surely delay any further restructuration of services for decades)!

Conclusion: despite general claims there is no political will nor interest on behalf of Ministry of Health to implement and support reforms of mental health care system toward development of community based mental health care.

2. Lack of adequate legislation

There is no specific legislation in Serbia at this moment regarding the rights of the persons with mental disorders. Existing legislature, in Health care law (*Zakon o zdravstvenoj zaštiti*)²², in special paragraph, protects rights of all patients (not particularly psychiatric). Paragraphs of this law protects right on information, free choice, privacy and confidentiality of information, self-decision making and consent, availability of medical documentation, confidentiality of data, objection, damage compensation and rights of patient under the medical examination.

²¹ Nacionalna komisija za mentalno zdravlje, Ministarstvo zdravlja Republike Srbije: Nacionalna politika u oblasti mentalnog zdravlja i akcioni plan (Nacrt 11) [National Committee for Mental Health, Ministry of Health of Republic of Serbia: National Mental Health Policy and Action Plan] Beograd, oktobar 2004. Available at: http://www.imh.org.yu/nacionalni_zakon.htm

²² Serbian version of this law could be retrieved from: http://www.zdravlje.sr.gov.yu/downloads/zakoni1/zakon_zdravstvena_zastita.pdf

Existing law does not regulate rights of patient with mental disorders (inability to comprehend the information, role of legal guardian and attorney of law...), neither the specific rights regarding the ways and conditions of treatment of persons with mental disorders.

The same law has a paragraph regarding obligation of referring patients to psychiatric institution (paragraph 44). The main criteria for involuntary hospitalization, obligatory referring to the psychiatric institution is estimation of the doctor that patient, because of the nature of illness, could endanger his/her life, some other person's life or property. In that case, general practice doctor or psychiatrist refers patient (they can demand police assistance) to the psychiatric institution and the doctor in that institution can admit patient in hospital without consent. The day after admission, team of the doctors in hospital decides if patient stays in hospital. After admission of patient in psychiatric hospital without consent, hospital is obligated to inform competent court of law within 48 hours.

Within the objectives of Stability Pact Mental Health Program, Serbia has been obliged to prepare the draft of the new law for protection of human rights of mentally ill and to adopt it in the Parliament. National Committee for Mental Health has prepared the draft of the law and submitted it to the Ministry of Health in September 2004, and today, after full four years nothing has been done on this issue. (Only in the immediate response to the MDRI report Minister Milosavljević has ordered to lawyers from the Ministry to make a review of the draft law and their review was generally very negative. After that, nothing has been done.)

On May 2006 Ministry of Health adopted the Regulations about conditions and models of internal organization of health services (*"Pravilnik o uslovima i načinu unutrašnje organizacije zdravstvenih ustanova"* "Sl. glasnik RS", br. 43/2006), which defined health services without any mention of mental health reforms, without inclusion of community mental health centres in the text, even with specification of 3000 psychiatric beds "for long-term hospitalization", which is even higher number than exist in the country at the present moment. Upon contacts with representatives of Ministry of Health, we have learned that there was no intention to confront existing National Mental Health Policy, and it is apparently an unfortunate consequence of the lack of communication between the sectors within the Ministry. The action has been taken to change existing Regulations, and an official request has been sent to the Ministry of health. Nothing has happen until now, although Minister Milosavljević has promised immediate change of the Regulations after the MDRI report.

Claiming that the action will improve rights of all patients, the Government introduced the concept of "protector of patients rights" (*zaštitnik prava pacijenata*) in in 2002. which became obligatory in 2005. Institution of independent patient advocate would indeed improve the rights of mentally ill, who are most endangered group, but the concept of Ministry was simply to appoint the lawyer who is already working in the hospital as a protector of patients rights, which is clearly conflict of interest. Moreover, for us that is the sign that the Government is not seeking for a solution to develop independent and sustainable mechanisms for protection of human rights but only to mask compliance to international standards, without real improvement of quality of services.

Conclusion: there is no political will nor interest on behalf of Ministry of Health to establish and endorse legislative framework nor independent mechanisms for protection of human rights of mentally ill

3. Inadequate response to cases of torture and murder

In the course of years we have observed that Ministry of Health does not respond adequately to incidents within the psychiatric hospitals which include torture or murder and attack on reform-oriented managers. There are two particular cases which can illustrate this: triple murder case in “Dr Laza Lazarević” hospital in 2006. and dismissal of the Director of “Gornja Toponica” hospital in May 2008.

In the first case, the interim director of “Dr Laza Lazarević” hospital dr Branko Ćorić (appointed by the Minister of Health) was for a year trying to instate rules and procedures but was severely opposed by hospital doctors and other staff. In one night, due to irregularities in procedures, one patient committed triple murder of other patients. Ministry responded by accepting the dismissal of the Director and appointing the committee which produced a report on situation in the hospital. Several years after this incident none of these recommendations from the report has been implemented and Ministry does not follow any of changes within the hospital. We have frequent reports of abuse and torture of patients in the hospital, of pharmacological and physical restraints. Several months ago one young patient was released from the hospital with severe burns on her right hand as she tried to burn bandages by which she was restrained for hours.

In the “Gornja Toponica” hospital, Director Milan Stanojković was since his appointment drastically changing horrible conditions: the number of beds is reduced in half, some departments are closed, first protected homes are opened, general living conditions are very much improved and within the administrative framework of the hospital first pilot community mental health centre has been established in the residential area of municipality “Mediana”. The hospital which was a symbol of old style repressive asylum psychiatry has changed (there was a famous case published in Washington Times in 1997 when one of patients had to undergo surgery and his hand was amputated due to physical restraint for many hours), but protests and attacks on the director were continuous and increasing. All of these culminated during the April 2008 when one group of opponents started “hunger strike” within the hospital with the help from unions (Sindikata Nezavisnost), accusing the Director for “mobbing”. Hunger strikers all have had interesting files: one doctor who was charged by the mother of the patient for misconduct and was punished by Health care inspection, one technician who beat a nurse, another technician who left the department while on duty and afterwards a dead patient was found, two administrative workers charged for stealing money from the hospital and several others, including former director, dr Vukić, who was at the post until the fall of Milošević’s regime and who committed many financial and professional misdeeds (just recently one of his patients died in the hospital without any adequate medical documentation). Dr Vukić said to the journalists of Washington Times in 1997, denying them the access to some departments that “there are medical reasons for some patients to be naked in the rooms”.

Only response from the Minister of Health was to insist with Dr Stanojković “to make a compromise” with the hunger strikers, and when that failed, he disposed Dr Stanojković from the position of the Director. With this act he clearly supported perpetrators within

the hospital, but also send very strong signal to all other reform-oriented managers that any efforts toward reforms is impossible and illusionary.

Working on the project called ‘Civil Society and Marginalized Groups: Initial Insight into Involuntary Placement in Psychiatric Institutions’, Helsinki Committee for Human Rights in Serbia has visited and monitor the three biggest psychiatric institutions (in Kovin, Vrsac and part of "Laza Lazarevic" hospital in Padinska Skela), during the period September 2006-February 2007.

The Helsinki Committee’s guiding objectives in realizing this project were fully compatible with the commitments undertaken by the State Union of Serbia and Montenegro (SCG), and later by the Republic of Serbia, by virtue of its admission to membership of the Council of Europe on 3 April 2003. The observations, conclusions and recommendations were published in special edition „THE PEOPLE ON THE MARGINS OF SOCIETY - Human Rights in Psychiatric Institutions“(Helsinki Files #25, Belgrade, February 2007.). The report especially noted incompatibilities with or deviation from the Serbia Law on Health Care, the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT Standards) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (UN Principles), the Recommendations of the Committee of Ministers of the Council of Europe to Member States Concerning the Legal Protection of Persons Suffering from Mental Disorder Placed as Involuntary Patients (COE Principles), and the Recommendations of the Parliamentary Assembly of the Council of Europe (COE Recommendations).

SUMMARY

1. Living conditions

All the three psychiatric hospitals visited by the Helsinki Committee for Human Rights team were designed to accommodate a large number of patients (400 to 1,000); this practice is the result of a long-abandoned concept of psychiatric patient care which presupposes the total isolation of sufferers from the community as well as giving rise to the marginalization and stigmatization not only of patients but also of staff and the profession in general.

The facilities, sanitary conditions and equipment of hospitals accommodating psychiatric patients are highly inadequate. After several decades of use with minimal investments, most of the buildings forming part of every psychiatric hospital are in an intolerably poor condition bordering on dereliction. These high-capacity establishments are virtually isolated from the social community. Their dormitories are designed to accommodate large numbers of patients. Thus the dormitories of the acute ward at Kovin hospital have more than 20 patients each. With their high ceilings, lack of thermal and damp-proof insulation, damp and mouldy walls, concrete flooring, poorly fitting window frames and doors, and other shortcomings these facilities do not provide the necessary conditions for the accommodation and treatment of patients; lack of both natural and

artificial illumination, stale air, cold or tepid radiators make up the environment which the patients and staff share every day. What is more, the living conditions could be described as inhuman and degrading treatment.

2. Treatment / patient's rights / access

Although all the three hospitals occupy large areas with enough space between their many buildings, they lack courses and recreational grounds as well as landscaping designed for therapeutic purposes; the work therapy rooms lack the necessary materials and there are no special buildings or rooms for the pursuit of cultural and educational needs. The treatment of psychiatric patients in these establishments is inadequate and consists mostly in pharmacotherapy. Pharmacotherapy is also administered to patients who are placed in the hospital for the purpose of obtaining an expert opinion on their mental condition. In either of the two hospitals in which such examinations are carried out (Kovin and Vršac), no patient found to be sound in mind is known to have been discharged.

The patients have no say in the choice of doctor and can make no decisions regarding therapy and care. Members of the staff interviewed insisted that upon admission a patient is informed about the nature of the illness diagnosed and told where he/she will be placed and who is going to treat him/her; nevertheless, there are no assurances that a specific and detailed treatment plan is made for each patient containing the diagnosis, the reasons for the treatment proposed, the treatment method, the expected duration of hospitalization, and alternative treatment methods including less restrictive ones. Such information (in particular advice on alternative and less restrictive treatment methods) is not offered the patient at the time of admission before he/she is asked to give consent to hospitalization.

Patients are not asked to give consent to planned treatment methods. Consequently, there is no independent body within the system to arbitrate in case a patient does not agree to the proposed treatment method. In certain situations the patient may request an end to a particular therapy though this is not a rule, nor is it regarded as the patient's right. The staff may (but does not have to) grant the patient's request if they assess that the patient has the capacity to make such demand. If, in the staff's judgement, the patient has no capacity to make a legitimate request for a therapy change, the medication is administered parenterally. The latest diagnosis of the patient's condition is largely influenced by the one made previously.

Neither patients and their family members nor patients' representatives and lawyers have access to data contained in medical files. Also, medical records do not routinely follow the patient on his/her transfer for hospitalization in another establishment; likewise, if the patient returns to his/her community, the records are not transmitted to the case doctor. The records may be taken out of the establishment only on the request of a court.

Psychiatric patients with somatic complaints are discriminated against in other health establishments. Staff of establishments for the treatment of somatic diseases refuse to treat and care for psychiatric patients in the same way as they do with regard to other patients. The psychiatric hospitals' cooperation with other health establishments is poor

because they do not like to deal with psychiatric patients even if their lives are in danger. The stigma because of mental illness is so great that psychiatric patients cannot obtain adequate medical care and protection when they seek help as somatic patients. This phenomenon is evident discrimination and calls for society's attention and concern; we consider that the State did not address this problem in a responsible manner.

Very few patients – mostly those who visit the day hospitals operating as part of these establishments – have access to treatment other than pharmacotherapy. As to the rest, *i.e.* 'the great majority', they are put away in psychiatric hospitals in effective isolation from the community, an expedient which accelerates the deterioration of their condition. There are patients who live in the establishment for 10 or 20 years (!) because they have no place to go and because there are no more appropriate institutions to take over such patients and help their gradual integration into society.

3. Staff issues

All the medical nurses and technicians have only been given general training, having had no special or additional training before being employed by the hospital in the treatment and care of psychiatric patients. Relevant special training is organized for them at the workplace only very seldom. Highly qualified staff consider that the funds spent on education are not enough and that much more could be done in this regard. In some establishments (*e.g.* Dr Laza Lazarević Psychiatric Hospital, after the triple murder) the management pays special attention to staff education and sets aside substantial resources for this purpose.

Staff are not trained in techniques of non-physical and manual control of agitated patients. Nursing school staff and non-medical staff are not supervised closely enough during the afternoon and night shifts. Since the afternoon and night ward shifts are severely understaffed and because none of the hospitals has a set procedure for dealing with high-risk situations, no proper supervision of the patients is possible; our conclusion is that these members of the staff are exposed to additional pressure and stress too. A most drastic consequence of this situation occurred at Padinska Skela.²³

For instance, at Kovin the afternoon and night shifts in the acute wards (male with some 70 patients and female with some 80) consist of three young medical nurses each. The situation in other psychiatric hospitals is the same or similar; these employees are prone to burnout, which increase the risk of patient's ill or inhuman treatment.

Low staffing levels overall are among the primary sources of problems affecting the operation of the psychiatric hospitals. With pharmacotherapy being the predominating type of treatment, the number of work therapists is glaringly inadequate. The shortage of social workers on the hospital staff is another severe problem. In view of the social workers' highly important role in the process of resocialization and reintegration in the

²³ Like many other health institutions, psychiatric hospitals have largely been affected by the Government measures which offer incentives to health workers (as well as teachers and other employees) to resign with a view to reducing the public sector work force. The spate of haphazard resignations from government-financed institutions caused a lot of problems: many services were left without necessary personnel because vacated positions were not filled again. The Padinska Skela part of Dr Laza Lazarević Psychiatric Hospital was faced with a most drastic situation: owing to the resignation of 60 employees, the management found it necessary to merge wards in order to be able to spread out the remaining staff adequately. In the wake of this reorganization occurred a tragic incident resulting in the death of three patients (2006.).

social community, this shortage gives rise to serious concern. By way of example, at Kovin one social worker is in charge of over 800 patients.

No training in the specifics of psychiatric illness and treatment of psychiatric patients is organized for supporting staff either before being employed by the hospital or during service. In some of the establishment, support staff take part in controlling disturbed patients without first being properly trained in non-physical and manual control techniques.

4. Prevention of ill-treatment (torture)

Although we found no obvious evidence of torture, we believe that the mechanisms designed to prevent different kind of ill-treatment in hospitals are not effective.

The selection of staff and their education should be a first mechanism designed to make sure that no ill-treatment of patients will occur in the hospital and that any such attempt will be adequately sanctioned. This is especially important regarding the selection of support staff and nursing staff (technicians) helping to control disturbed patients or prevent inter-patient violence. The problem is compounded by the fact that during the afternoon and night shifts there is no adequate supervision – sometimes none at all – by highly qualified staff and management of the work and conduct of support staff and nursing staff. Coupled with the fact that the establishments have no set procedures for dealing with high-risk situations, these mechanisms are clearly not enough of a safeguard against patient ill-treatment.

In the context of ill-treatment prevention, of special concern is the fact that the conditions and procedure for restricting patients' freedom of movement (by placement in 'locked' wards or physical restraint) are not prescribed at either State or establishment level.

The Serbian Law on Health Care provides for organizing the services of a protector of patients' rights in every health establishment. The protector is most often a lawyer. He/she is employed by the health institution to receive and examine patients' grievances and complaints about staff work and hospital treatment as well as rights violations. The protector's duty is to prepare a report, a copy of which is submitted to the patient, within five days from receiving the complaint. A patient who is dissatisfied with the protector's findings may complain to the Ministry of Health Inspection. The Law on Health Care does not state whether the Inspection must reply to the patient's complaint. But in view of the fact that treatment in a psychiatric hospital is specific in that placement may be involuntary and patients may not leave at will, this mechanism for protecting patients' rights cannot be considered sufficient: first, the protector must not be an employee of the establishment but a completely disinterested and independent person or body; second, the procedure must guarantee transparent proceedings, fixed deadlines, and the obligation of an authority of first and second instance to examine the complaint carefully and reply to the patient; third, there must be a mechanism ensuring that the patient's complaint will be transmitted to the protector to whom it is addressed. Some of the establishments have not engaged a protector of patients' rights. In these establishments the patients make complaints to the head of the ward or at therapy group meetings. Other than protectors of patients' rights, establishments have internal control

commissions made up of staff doctors authorized to supervise the work of the staff and their treatment of the patients from a professional point of view.

Contacts with the outside world can be an effective mechanism for preventing the ill-treatment of patients. Although patients are not forbidden to communicate with the outside world (by way of mail, visits, telephone calls), there are no set rules guaranteeing these rights to the patients. Patients in 'locked' wards maintain all their contacts with the outside world through members of the staff. Although the time and duration of visits are laid down, a doctor may restrict visits to a patient if he/she considers that they would be harmful to the patient's condition. Further, patients in 'locked' wards may make telephone calls only when permitted to do so by staff. Since generally relatives and friends can reach patients only via the telephones installed in the offices, it is again down to staff to decide whether or not to permit the contact. Further, patients in 'locked' wards can send letters only through staff. Because there are no set procedure and guarantees regarding the patients' right to communicate with the outside world, staff have full power of discretion in deciding to allow or forbid any kind of contact.

The Ministry of Health exercises supervision of the work of hospitals. The system has no independent body to carry out regular or *ad hoc* monitoring of psychiatric establishments to ascertain respect for the human rights of psychiatric patients, particularly of involuntary patients.

5. Means of restricting freedom of movement

The means and procedures for restricting freedom of movement in psychiatric hospitals are not laid down by regulations. This means that there are no legal or sub-legal acts prescribing the means and their application, duration of their application, possible complaints in connection with their application, and any obligation periodically to revise application decisions.

The hospitals use two methods of restricting patients' freedom of movement. The first method is to place a patient in one of the 'locked' wards. The purpose of their placement there is to keep them under closer supervision by the staff. In a 'locked' ward, the patients can move within a hospital wing comprising corridor, dormitory, bathroom and, possibly, day-room. The patients may communicate among themselves, with staff, but with the outside world these contacts are controlled more strictly than in other wards. In summer, patients are taken out for a walk but not every day because there is not enough staff to watch them during the walk. In view of the fact that there are no set criteria regarding placement, its duration, possibility of complaint, and regular revision of placement decisions, everything concerning a patient's stay in a 'locked' ward and its duration is subject to staff's discretionary powers. 'Locked' ward treatment is prescribed for all involuntary patients, those prone to escaping, those who do not accept the fact of their condition and consider that they need no treatment, and those who refuse medication. But because other wards are overcrowded, patients are sometimes kept in 'locked' wards for several years, although with less limitations.

Another form of restricting a patient's freedom of movement is by fixation or immobilization, when the patient is fastened to the bed with leather belts. None of the hospitals prescribes action to be taken in emergencies or how to immobilize patients. Owing to low staff levels in the wards, patients are used to help control disturbed and

agitated patients. This may be regarded as degrading treatment in respect of both those who are being restrained and those who are assisting.

There is no specific procedure for preventing such therapy treatment from turning into torture. The notion of extreme agitation is subject to the personal assessment of a member of the staff. There are no special records of patients subjected to the means of restraint. Information on the need to immobilize a patient is entered in a report book kept on every ward. The information is entered on a doctor's oral instruction without his/her signature and contains a note that the case psychiatrist ordered the measure upon being consulted. A special immobilization register is kept by only one establishment. In some establishments patients are immobilized in the presence of other patients.

According to staff, ECT therapy is not practiced in any of the hospitals. If a patient needs ECT therapy, he/she is taken to the Institute of Mental Health (Belgrade). If a patient is opposed to ECT therapy, there is no outside independent body authorized to decide whether or not to go ahead with the therapy.

The prescribed complaints and grievances procedure does not offer sufficient guarantees to patients that their cases will be looked into impartially and that every instance of violation of their rights will be adequately sanctioned. Patients' contacts with the outside world, especially those of patients undergoing treatment in 'locked' wards, are not specifically regulated. The treatment of patients in the oligophrenic ward at Vršac (the 60 oligophrenic ward patients are mostly young people suffering from grave forms of mental retardation) in view of their accommodation conditions, the small number of staff involved, and absence of adequate knowledge in treatment and care, may be characterized also as inhuman and degrading treatment.

6. Guarantees in the context of involuntary placement

The procedure for placing persons in a psychiatric hospital is regulated by the Law on Health Care and the Law on Non-Contentious Procedure. In our opinion, the existing legislation and the procedure followed by hospitals and courts based on this legislation do not offer sufficient safeguards, in particular in the context of the involuntary placement of patients.

Voluntary placement implies that the patient gives written consent to his/her placement in a hospital. This should invariably be done in the presence of two members of the public who are not employed by the establishment, have not brought the patient to the hospital, and have not made any report on the basis of which the patient was brought to the hospital. The witnesses present at the time a person is brought to a psychiatric hospital are usually former members of staff who live nearby and come when asked to do so. Before being admitted, a voluntary patient is not informed about the proposed treatment plan including information about the diagnosis, the reasons for the treatment proposed, the treatment methods, the expected duration of hospitalization, and alternative kinds of treatment including less restrictive ones. This leads to the conclusion that the procedure for signing consent to placement and treatment is an extremely routine and formal affair. The form is attached to the case history. If the 'statement of consent to placement and treatment' is not signed immediately owing to lack of cooperation on the part of the patient at the time of admission, the statement may be signed later whereby the involuntary placement becomes voluntary.

If no placement consent is obtained, the establishment informs the competent municipal court that the patient has been placed against his/her will. That the courts are in this connection ineffective and, dare we say, superficial is borne out by the fact that in most cases they merely rubber-stamp what the hospital requires of them. In other words, the courts are under no obligation to see the patient, obtain independent expert opinion, and assign the patient a lawyer if the patient so requests and is unable to find one himself/herself, which is most often the case. The courts do not have to, and in most cases do not, present any other evidence that may be of consequence for an involuntary placement decision. The courts never submit an involuntary placement decision to the patient, nor are they under an obligation to providing a lawyer to help draw up a complaint to a higher instance court. Informing the family of the decision is of no consequence particularly where the family was directly involved in placing the patient in hospital against his/her will. Since a court can render its decision only after over a month later, the existing judicial procedure and practice in this domain is clearly inconsistent with the relevant international standards, in particular with the European Convention on Human Rights. The procedure announced by the Second Municipal Court in Belgrade²⁴, which is yet to be put into practice, is somewhat of an exception. With regard to placement, the law is clear in that it specifies that involuntary placement is applied to persons who, owing to a deterioration of their mental health, may pose a serious threat to their and other persons' life and health; the practice, however, is quite different from this. Given that Dr Laza Lazarević Psychiatric Hospital deals with emergencies, it is often forced to admit persons whose condition in no way satisfied the above criteria. Members of the Ministry of the Interior are largely responsible for this because they bring persons under the influence of alcohol or other unruly persons to the hospital doors and merely leave them there. For this reason the hospital is forced to admit and care for categories of persons it is not obliged to deal with under the present regulations.

Owing to the fact that there are no legal and sub-legal acts guaranteeing the rights of especially involuntary psychiatric patients, no adequate and effective procedure for making grievances and complaints about staff to a body outside the establishment and independent of the Ministry of Health, and no regular and *ad hoc* monitoring of psychiatric establishments by a body independent of the Ministry of Health, it is clear that such guarantees as exist in the context of involuntary placement in psychiatric hospitals are insufficient to say the least.

We also take this opportunity to point out the situation of forensic patients, whose treatment in hospitals is not regulated at all. This is due to the fact that they cannot be subject to the provision on the Law on the Enforcement of Criminal Sanctions. In a legal sense, these persons are effectively in a more unfavourable position than prisoners, in particular in view of the fact that the new Law is, at least on a normative plane, largely in conformity with relevant international standards. The judicial procedure regarding the involuntary placement of patients as well as current judicial practice in general give rise to arbitrary decisions and violations of the right to a fair trial. This also goes for judicial

²⁴ The hospital Dr Laza Lazarevic has arrangements with the Second District Court in Belgrade for judges to make two visits a week to establish whether a person is a voluntary or an involuntary patient. In the case of an involuntary patient the court will request the opinion of two experts from the hospital. The court will rule on the basis of their opinion whether or not the patient will be accorded involuntary treatment. The drawback is that the entire procedure rests on the opinion of two experts from the hospital, without the involvement of an independent expert, lawyer or representative whom the court is still under no obligation to provide.

determination of the length of treatment of forensic patients. Judicial proceedings originating in demands to end the compulsory treatment and care of persons placed in establishments as offenders result in arbitrary judicial decisions and violations of the right to a fair trial.

Whether or not a patient is discharged is subject to an appraisal of a team of experts. Even voluntary patients cannot be discharged from hospital when they wish or decide to do so. The decision whether the patient is able to continue his/her treatment at liberty rests with staff. In most cases, the patient is given assurances that discharge would not be good for him/her; in case the patient insists, involuntary placement proceedings are instituted and a court is included in the proceedings. Judging by judicial records in cases of involuntary placement, however, we have no reason to believe that in this case the court will not merely rubber-stamp the course of action already decided upon by the hospital staff.

Although things differ somewhat when it comes to the discharge of forensic patients, in these cases too the court procedure and the manner in which decisions are made are inadequate from the point of view of respect for human rights, in particular with reference to the European Convention.

There are also no temporal limitations regarding the placement and hospitalization of forensic patients. The court is under an obligation periodically to review a safeguard measure every six months. The court should base its decision above all on the opinion of a hospital doctor as well as on other evidence it is required to collect. The courts rarely if ever render decisions on the basis of carefully collected evidence, witness testimony, independent expert opinion, centre for social work report, and patient interview. The courts very often do not bother to go too deeply into the facts and render their decisions automatically on the strength of the position of the prosecutor's office alone; and the latter, for their part, are as a rule opposed to terminating safeguard measures. The courts are under no obligation to see the patient and hear his/her opinion before rendering decision.

Another great problem of the staff of psychiatric hospitals are the patients who have been there for a number of years because they have no adequate family and social care institution support and cannot look after themselves without help. These patients are forced to live in hospitals and the State has not yet come up with adequate arrangements for their alternative accommodation. At present, finding more adequate accommodation for these patients is a matter of personal initiative by members of the staff; unfortunately, there is no cooperation or coordination of efforts with the Ministry of Labour and Social Affairs to solve the problem in a systemic manner.

7. An overview of legislation relevant to involuntary patients and in-patients in psychiatric institutions

The new Republic of Serbia law on the care of persons with mental illness is still in preparation. However, the draft of the law, which has been revised **19 times** so far, has not yet been introduced into the National Assembly. At the moment, it is not possible to say when the new law will be adopted.

Meanwhile the matter of involuntary placement of citizens in psychiatric institutions continues to be regulated by two laws. The first is the Law on Health Care of

the Republic of Serbia (*Official Gazette* 107/05), whose Article 44 lays down the conditions and procedure for involuntary placement in a psychiatric institution. The Article provides: 'If a medical doctor or a psychiatric specialist or a neuropsychiatric specialist assesses that the nature of a patient's mental illness is such that it may threaten the life of the patient or the lives of other persons or of property, he may refer him for in-patient treatment, and the competent medical doctor in the appropriate in-patient health institution shall admit the patient for in-patient treatment without the patient's consent in conformity with law, with the proviso that the next day following the admission a team of consultants of the in-patient health institution shall decide whether or not to keep the patient for in-patient treatment.' Paragraph 2 of the same Article provides: 'The in-patient health institution shall notify the competent court of the admission of the patient referred to in paragraph 1 of this Article within 48 hours following the date on which the patient was admitted.' The next paragraph stipulates that the mode and procedure of treatment of persons with mental illness, the organization and conditions of treatment of such persons, and the placement of such persons in in-patient institutions will be regulated by a separate law.

Chapter V of this Law spells out the rights of the patients. Thus Article 26 enunciates the right of access to health care without discrimination on account of a personal characteristic, including the nature of the patient's illness. Article 27 defines the patient's right to be informed of the state of his health regardless of his condition and Article 28 defines his right to receive information of other kind (regarding diagnosis, proposed medical treatment and its duration, consequences of a failure to apply treatment, nature and probability of risks involved, alternative treatment methods, effects of medication, possible changes in the patient's condition and so on). Article 29 enunciates the right to choose one's own doctor and Article 30 guarantees patients' right to privacy and confidentiality of information. Articles 31 through 35 deal with the right to make one's own decisions the right to consent, i.e. whether or not the patient is entitled to decide on all matters concerning his life and work, also guaranteeing this right to patients with impaired judgement in so far as they can be aware of the consequences of their decisions. Article 36 grants the right of access to medical records to patients as well as to their parents, guardians, and legal representatives. Article 37 guarantees the right to secrecy of information contained in medical records. Article 38 defines the rights of patients subjected to medical tests, specifying that such tests may only be carried out on legally competent patients with their consent. In exceptional cases, this may also apply to minors and legally incompetent persons, subject to the approval of their legal representative. Article 39 regulates the patient's right to complain to the protector of patients' rights (an employee of the health institution). On receiving a complaint the protector must find out whether it is justified and must make a written finding thereon within five days. The finding is delivered to the institution director and to the patient, the latter having the recourse of complaining against the finding to the Ministry of Health Inspection. However, the Law does not obligate the Ministry of Health Inspection to reply to the complaint. The general provisions of this Law would also have to apply, without exception, to in-patients in psychiatric hospitals and institutions.

The Law on Non-Litigious Proceedings of the Republic of Serbia provides for the procedure of 'Involuntary retention in a health organization practicing activity in the

domain of neuropsychiatry.’ Under this provision, a court may decide in a non-litigious proceeding to keep a person in a psychiatric institution as an involuntary patient.

Unlike the Law on Health Protection, which defines the conditions under which a person may be referred for in-patient treatment in a psychiatric institution, the second Law contains the following quite skimpy and vague provision regarding the requirements for involuntary placement: ‘In this proceeding the court decides on the placement and retention of a person with mental illness in an appropriate health organization if the nature of the illness is such that the person’s freedom of movement or of communication with the outside world must be restricted.’ (Paragraph 1 of Article 45.)

A health organization which admits a person for treatment without his consent must notify a court of the involuntary placement within three days of the admission. The court whose territorial jurisdiction includes the institution is competent to deal with the case.

Where a proceeding has been instituted to determine whether a person is legally competent or not, a court may decide on involuntary placement in a psychiatric hospital if such placement is necessary to establish the person’s mental condition, i.e. with a view to obtaining expert opinion. A person may not be held in an institution for the purpose of obtaining expert opinion longer than three months. (Paragraph 3 of Article 38 of the Law on Non-Litigious Proceedings.)

A person may also be placed in a psychiatric institution voluntarily. A statement of consent to admission must be made in writing in the presence of an authorized institution officer and two legally competent and literate witnesses neither of whom works for the institution, is a blood relative or spouse, or has brought the person to the institution.

If a person wishes to recall his consent to institutional placement but an authorized institution officer considers that the patient must remain in the institution, the institution must notify this to a court and apply for a court order for involuntary placement within three days of the consent being recalled.

Although paragraph 2 of Article 45 defines this procedure as urgent, Article 50 allows the court from 15 to 30 days to render an involuntary institutional placement decision from the date on which it received the application. Before a decision is rendered under Article 49, which refers to Article 38 of the same Law, the person must be examined by at least two medical specialists. Since the Law allows the examination to be carried out by medical specialists from the institution in which the person is involuntarily placed, this is the procedure most frequently employed in practice. Article 38 provides that the medical specialists should render opinion on the patient’s mental condition and judgement.

Should the court decide that the person must be retained in involuntary placement, the period of such placement must not exceed one year. The health institution must submit periodic reports on the medical condition of the involuntary patient though the Law does not specify the time frames and the number of reports. On the request of the involuntary patient, his guardian or his temporary representative, as well as ex officio, the court may decide to order the patient’s discharge from the institution if his medical condition has improved to such an extent that his involuntary retention is no longer necessary.

If the health institution judges that the person ought to be kept beyond the term laid down by the court, it must make application to the court to extend the term 30 days before the date on which the term expires. The court renders its new decision under the same procedure. Decisions ordering involuntary placement, discharge, or extension of involuntary retention may be appealed by the patient, his guardian, or his temporary representative. Since the institution is not requested to submit a copy of the decision to the involuntary patient, it remains unclear how the patient can appeal against such a decision at all. The time limit for lodging an appeal is three days after receipt of the decision, and the court of second instance must rule on the complaint within three days after receipt of the complaint.

The rights and obligations of involuntary patients in psychiatric institutions are not defined by legal and sub-legal acts.

II Review of the report of State party Serbia, prepared by Centre for Human Rights-Nis

Centre for Human Rights-Nis was implementing project ``Monitoring conditions in Nis Penitentiary``, funded by EC, was from May 2007 to May 2008. In this period implementing Team realized 8 regular and 4 extra visits to Nis Penitentiary (male prisoners, adults) and this represents one of the sources of information for this Report

Project methodology: (1) Visits: a) obtaining the authorization of access; b) Establishing the program of visits/ plan for each visit; c) Methodology of visits; d) Follow up to the visit. (2)Visits repetition. (3) Observation and comparison.(4) Conversations: (``free``/ purposeful discourse or an interview). (5)Reports (Annual and after each visit).(6)Measures recommended. (7)Questionnaires. (8) Reporting results to international institutions, bodies and organizations.

There are 3 penitentiaries and 28 district prisons in Serbia. There are 9.500 prisoners and 6.500 of sentenced ones wait for the sentence serving since there is no enough place in the existing prisons. Overcrowding of prisons is expressed compared to accommodation capacities of prisons. Number of prisoner is significantly growing while the age limit decreases. Remand percentage is 75-80%.

Monitoring was conducted only in Penitentiary Niš. Probability that the conditions in other prisons are better is insignificant.

I/ Things in Serbian report that we do not agree with:

(Ref: par.136)

``The practice of the treatment of prisoners was predicated on the concept of re-education.``

All the services in prisons in Serbia, as well as treatment service, most commonly do not have sufficient number of staff. There is no special education for treatment officers. Most commonly, treatment officers are sociologists, pedagogues and the least number of them are psychologists, and thus (except for psychologists) they can not use

their basic knowledge for the work with the prisoners. There are also treatment officers who were taken over from other institutions, for example from the police.

Presently the situation in Serbian prisons is that one treatment officer has to work with a group of approximately 50 to 80 convicts, namely, can spend once in 2 months at most 20 to 30 minutes with one convict.

In the existing work conditions and without received additional education it is not purposeful to raise the question of the quality of work of treatment officers in the function of prisoners' re-education.

In order to enable treatment officers to practice re-education, it is necessary to provide:

(1) Education and skills of: group work, individual work with elements of therapy,
(2) re-Re-education program that they would implement, aimed at reduction in remand prisoners.

(Ref: par. 149)

Informing persons deprived of liberty: Prisoners should get introduced with the Rule book of House Rules at the admission in the Penitentiary. Answers of interviewees differ, no matter whether it was orally done or the text was made available to them in written form.

During several visits we found out from interviewees that almost none of them was given any information at the admission in the Penitentiary or their rights were retold in short, and in order to introduce with it in more details they were directed to House Rules that are supposed to be in every department. However, they say that House Rules are not posed on visible place, except for the Admission Department and that is why they became aware of the fact that something is forbidden only when the violation of some rule is already done (without going into more details who and why destroys House Rules after they are posed).

The following question comes up- it is informing of illiterate prisoners, whether they are paid enough time and efforts in order to understand what is presented, so that they could equally realize their right to information and not to be discriminated in comparison to literate prisoners

Information received from interviewed literate prisoners about informing illiterate ones that were just admitted, is that illiterate prisoners are directed to literate ones of whose good will and mood depends when and if they will read them out a certain rule or write a request or complaint. We also found out from interviewees that illiterate prisoners were forced to pay in material goods (cigarettes and similar) to literate ones, for writing different applications or reading of House Rules and similar. In this way, illiterate prisoners are discriminated in comparison to those literate. At the moment (April 2008) there are 29 illiterate prisoners in Penitentiary Niš, which is not a great number. It would be preferable to provide additional assistance to illiterate prisoners that should be regularly available, in respect of writing of different applications and introduction with House Rules contents and other texts relevant for them.

House rules are visibly posed as long as it is torn by prisoners. Contents of House rules are in line with valid laws. Formulation is too specialized, arid non-understandable

and unadjusted to capabilities of a greater number of prisoners (and in general population that does not deal with legal matters). From the conversation with the prisoners it is clear that even those prisoners who know the procedure and further key elements of the procedure, either don't know the rules or they are introduced with them by more experienced prisoners.

(Ref. to paragraph 150, 154, 155, 156, 157,158):

All the prisons in Serbia are characterized by high over-crowding and it is not possible to meet even national standards that are at lower level than those given in European Prison Rules. When speaking about the prison in which we monitored the conditions, we can say that, during the realization of the project, the number of prisoners kept growing from initial 950 to 1153 prisoners in visit VIII. Optimum number of prisoners in Penitentiary Niš is 850.

We assume that mistake is a cause of the mistake in given part (par. 150, line 4) per one prisoner, namely, it is 8 cubic meters, not square (Serbian Law on Execution of Prison Sanctions/ Article 67). Heights in prisons, as public facilities are more than 2.20m so that the space per one prisoner is, according to the Law, 3 or less square meters, in case that there is optimal number of prisoners in the prison.

Following aspects (according to European Prison Rules) were under monitoring regime during project implementation:

I/ Treatment (a,b,c)

I/a-Torture and ill-treatment: Regarding the interview carried out with the prisoners, the team members came into the conclusion that only a small number of interviewed prisoners is of the opinion of being exposed to the physical violence by the officers of the penitentiary even in those situations which were officially recorded as applied restraint measures.

During the interview with the examinees being lately injured by the officers in applying the restraint measures and according to the documentation of the medical service, it is concluded that they reject to talk about that particular event. It implies to either avoiding renewing trauma by speaking about it or they are afraid of the consequences they would have due to the reporting. On the other hand, what become relative are the optimistic answers of the prisoners about the quantity of restraint measures applied and about the small number of recorded cases of applied measures of constraint consequently being injured.

The problem of psychological violence is slightly expressed partially due to the fact that the prisoners were not directly exposed to the violence or within the given answers they were unable to recognize a certain behavior as psychological violence since this kind of "communication" is considered normal and usual for the penitentiary conditions.

A number of the interviewed prisoners state that there are prisoners with certain additional privileges given by the officials of the penitentiary at Niš. Among the privileged are "the tippers" and "the tipping" is paid with the privileges. The other group of the privileged/preferred are the wealthy ones (they communicate with the guards through their relatives and, according to the statement of the prisoners, pay for their

transfer to a better dormitory), as well as the prisoners being the main dealers of the forbidden goods at the penitentiary.

Regarding the interrelation among the prisoners themselves the power results not only in money but also in goods possession. The relation between the prisoners - members of the various ethnical and religious groups depends on their numerical quantity: when the number of majority group members is equal to the number of other existing groups the relationship is good.

The majority of the Romas is poor so that they are consequentially discriminated since they are required to work for others. Being additionally employed at the penitentiary they are engaged in duties nobody wants to do, which is the same for the Romas out of the penitentiary.

Regarding the existence of the racket within the informal groups the overall opinion of the prisoners is that it is mainly represented at the "C" dormitory later resulting in conflicts and injuring. Almost all of them is of the opinion that the stuff is extremely corrupted and that everything is for sale at the penitentiary. It is stated that the existed corruption fosters the importations of drug and mobile phones into the penitentiary, and the work positions being on a sort of illegal trade.

According to the interviewed the informal groups exist without being organized by sectors but the type of "extra activities" put illegally in practice. The overall opinion is that they are absolutely allowed to do everything being under the full protection of the penitentiary staff.

I/b- Solitary confinement: It is legislated by The Law on Execution of Penal Sanctions that the maximum period of time the prisoners should stay in solitary confinement is 15 days, being confirmed by some of the imprisoned. However, few of the prisoners mention that this legislated period of time is not always obeyed so that the solitary confinement period can even last for a month. Before being sent to the solitary confinement the prisoners go through the health check, then once a day, being more frequent if it is needed.

They all agree that their right for staying outside for an hour a day is obeyed during the period of solitary confinement.

I/c- Means of restraints : The prisoners are not informed enough not only about the conditions for applying the means of restriction but also what they are consisted of.

II/ Protection measures (a,b,c,d,e)

II/ a- Informing the persons deprived of liberty: Informing persons deprived of liberty: Prisoners should get introduced with the Rule book of House Rules at the admission in the Penitentiary. Answers of interviewees differ, no matter whether it was orally done or the text was made available to them in written form.

The following question comes up- it is informing of illiterate prisoners, whether they are paid enough time and efforts in order to understand what is presented, so that they could equally realize their right to information and not to be discriminated in comparison to literate prisoners.

House rules are visibly posed as long as it is torn by prisoners. Contents of House rules are in line with valid laws..

II/ b- Inspection: Only one of all interviewed prisoners had met with representatives of some NGO, before our visit. It was Helsinki Committee for Human rights which had visited Penitentiary Niš before.

II/ c- Disciplinary procedures: In the period of 6 months, on which the data received from the Penitentiary is based, there were 262 disciplinary procedures were conducted, which, in comparison to total number of prisoners, represents 1/4.

Impression is that interviewees are pretty discouraged in respect of their chances in eventual disciplinary procedure against them and that on the other hand they are almost completely uninterested in getting introduced with the way in which they could protect their rights in appellate procedure as well as in the process of lodging complaints to a treatment by Penitentiary officers.

II/ d-Complaints procedures: Prisoners have a weak understanding of the procedures and reasons for a complaint, and almost without exceptions, don't use expert legal assistance. It is probably the reason why only one prisoner's complaint was adopted.

System of giving legal assistance is organized in line with law, but there are certain lacks that can have significant consequences to legitimacy of disciplinary procedure. Insufficient number of employees on these duties can be seen in the fact that one person is a deputy in Disciplinary Commission, and at the same time he gives legal advice to prisoners, which brings to factual and involuntary conflict of interests. No matter the fact that in cases, when involved in Disciplinary Commission work, he or she can avoid giving legal advice to a prisoner against whom the procedure is conducted.

It may turn out to be useful to remind of statistical data that show that almost in 100% of the cases, the person against whom the disciplinary procedure was conducted were declared guilty.

II/e-Separation of categories of detainees: Prisoners can require change of accommodation for security and family reasons, i.e. brothers can be together. Those incapable of working are separated in a special department.

All interviewees know who decides upon the change of accommodation but they are doubtful in respect of equal criteria based on which the accommodation is changed or regarding the criteria for the advancement through categories. Out of that it comes that general conclusion is that change of accommodation is one of main potential resources for corruption spreading in Penitentiary.

Prisoners unwillingly talk about the cases of sexual abuse although a small number of them said that they had heard of it. Based on prisoners' statements, allegedly only one case of sexual abuse happened, in the time of rebel.

III/ Regime and activities (a,b,c,d,e,f)

III/ a- Contacts with the outside world: The prisoners are aware of the fact that the letters can be sent on daily basis. They hand over an open mail in order to be checked if there is anything else except for the written paper. This is something the prisoners are informed about. They are informed about the conditions for receiving regular and external packages, received according to the category classification.

Keeping family and other social relations is enabled according to the law. The searching of the visitors is performed due to the need.

There is not recognized the need by the penitentiary staff for some additional care (compared with the prisoners who have regular visits) for the prisoners being without any visits nor is recognized the reason for doing so.

The access to the information from outside world is through TV and newspaper, it is free but without much variety and in insufficient number compared to the number of prisoners per newspaper.

III/ b- Education: The institution has not offered any possibility for education since the school was burnt in the year 2000 during the riots. At the same time the prisoners are interested in gaining additional education. The prisoners have access to the library by not simple enough procedure that will encourage them to reading and self learning.

III/ c- Outdoor activities: All of the interviewed prisoners claim that their daily outdoor activities last less than an hour. The prisoners are able to do exercises up to hour a day at the gym or outside in the open air where the courses for group sports are situated.

III/ d- Leisure activities: At the beginning of the project (July, 2007) there were no leisure activities. Later on (October, 2007) the art (engraving) and painting courses started. At the moment the music section is being prepared (April, 2008).

III/ e- Religion : The orthodox church has been renovated whereas other religious entities do not exist. Generally, the religious ceremonies of other faith can be performed.

The interviewed prisoners who belongs to some of generally accepted religious communities in Serbia (orthodox, catholic and Islamic faith) make no complaints on respecting their religious rights regarding the fact that those religious rights, except for the occasional fasting, are not followed. On the other hand one of the interviewed, the member of a small religious community (an Adventist) states that due to his faith he is not only often exposed to insults ("sectarian" and other) but also to physical violence by other prisoners that was the answer to the question about the bruise under his eye.

III/ f- Work: Some of the interviewed prisoners are not interested for any kind of work during their servitude whereas the ones who are interested state that there is not enough work for all. The work is on voluntary basis and the salaries are from 1200 to 2000 dinars; at the third dormitory to 3000 dinars (the amounts are based upon the decision on prisoners' wage rate). The working hour is from 8:00 am to 3 pm.

IV/ Medical services (a)

IV/ a- Access to medical care: The prisoners have access to the medical service in any time on the request given to the security staff or the treatment officer who escort them to the medical ward to receive a medical care. The medical service consists of a certain number of practitioners and medical technicians with a full time job in penitentiary at Niš, and medical consultants engaged according to the schedule.

V/ Material conditions (a,b)

V/ a- Food: All of the interviewed prisoners are generally satisfied with the quality, quantity and variety of meals. Two different menus are prepared: regular and diet-diabetic. The approximate nutrition value of the regular meals is 13 616 J, whereas of the diet-diabetic is 13 200 J. The prisoners have three meals a day. If it isn't possible to prepare hot meals the prisoners have dry ones.

V/ b- Overcrowding and accommodation: Besides the overall crowded capacity of the penitentiary the specific problem is a huge number of prisoners at the Increased Supervision Department. There are three and in some places four prisoners in consolitary confinement. An additional cause of jeopardizing the privacy and personal dignity of the prisoners at Increased Supervision Department are the toilets at the solitary confinement being without any doors or partition walls.

The prisoners do not spend 24 hours or more indoors which complies with the national standards. The ventilation and amount of airing available indoors is adequate except for the Special Supervision department due to the factors previously mentioned.

The hygiene and sanitary facilities are available but only to the prisoners responsible for that job.

(Referring to par.151)

Security Service has insufficient number of staff which influences their feeling of being unsafe in contact with prisoners. Staff has no enough knowledge and skills (martial arts as well) and they are not well trained for the work in stressful situations. There is also a lack of internal control of work by someone who is not a member of a service itself, which would make information of recorded cases of restraint measures use would be more valid.

Mechanism of control of Security Service should guarantee respect and provision of conditions for the accomplishment of prisoners' rights. Control conducted only by the members of Security Service does not guarantee neutrality in relation to the service itself and would be far more efficient if someone from other service or external evaluator was involved in the work.

Insufficiently good work of Security Service and Health Care service can jeopardize life and health of prisoners which is one of their basic rights.

(Ref. to par. 153)

Treatment service (`Re-education service`) employs insufficient number of treatment officers in relation to number of prisoners (treatment groups consist of 65-84 prisoners per one treatment officer/ namely treatment officer can spend once in 2 months at most 20 to 30 minutes with one convict). Conditions of treatment officers' work, represent a limiting factor in fulfillment of their legal obligations, not only based on the Law on execution of prison sanctions but as well from the obligations that derive from the description of this working position. Insufficient number of basic technical means and huge number of prisoners with whom every treatment officer works, brings to impossibility to perform the work adequately (14 treatment officers and mainly 1.100 prisoners)

Due to conditions in which the treatment officers are working now, and which practically disable them to do what they are supposed to, we cannot comment on expert aspect of their work.

At the same time treatment officers lack knowledge on human rights and imprisonment conditions as well as skills, above all for the work with the group. Their

insufficiently good work has impact on the low level of the prisoners' treatment (75-80% of remand prisoners);

There is no program that treatment officers would implement, with an aim to prepare the prisoners for social reintegration. Out of the prison, Centers for social care do not deal with ex-prisoners, in order to support their reintegration.

(Ref. to par. 161)

Prisoners have a weak understanding of the procedures and reasons for a complaint, and almost without exceptions, don't use expert legal assistance. It is probably the reason why only one prisoner's complaint was adopted.

From conversation with some of the prisoners it can be concluded that all the complaints do not reach the person they are intended to, i.e. the Warden. In monitored period of six months (information required on 09.07.07.), total number of lodged complaints to officers' work is 18, while only one was solved in favor of a prisoner. It is, maybe, the best indicator of certain prisoners' unconcern for lodging complaints and their belief that lodging complaints will not improve their position.

Interviewees were introduced, without exception, with the possibility to lodge complaints to the Warden. They are not much interested in lodging complaints to the Department in charge of supervision because they don't believe in efficacy of that action.

The prisoners have insufficient knowledge of the procedure of lodging complaints to treatment by officers and especially the rights they have in disciplinary procedure.

Smaller number of the prisoners know that they have right to a legal assistance by expert (lawyer), employed in Penitentiary Niš.

Providing legal assistance:

System of providing legal assistance is organized in line with law, but there are certain lacks that can have significant consequences to legitimacy of disciplinary procedure. There is impression that officers in charge of giving legal assistance are capable of giving it but their number is too small in comparison to large prison population, they are loaded with other daily duties that they regularly perform. This most probably leads to insufficient interest among the prisoners regarding the accomplishment of this very important right during their stay in Penitentiary. Innovation in giving legal assistance (03.2008.) is that Penitentiary lawyer is on duty, once a week, in one of the dormitories and gives oral advice or draws up written submissions for the prisoners.

Insufficient number of employees on these duties can be seen in the fact that one person is a deputy in Disciplinary Commission, and at the same time he gives legal advice to prisoners, which brings to factual and involuntary conflict of interests. no matter the fact that in cases, when involved in Disciplinary Commission work, he or she can avoid giving legal advice to a prisoner against whom the procedure is conducted.

It may turn out to be useful to remind of statistical data that show that almost in 100% of the cases, the person against whom the disciplinary procedure was conducted were declared guilty.

Team members took insight in number of random selected disciplinary procedures that were conducted against prisoners in last year. Main aim of taking insight in these matters is determination of eventual lacks in a part that is related to giving legal assistance to prisoners by Penitentiary Service in charge. According to Team Members'

opinion the only lack noticed during that insight lays in the fact that the way of keeping record in disciplinary procedure is not precise enough, bearing in mind that there is a form already in which the data is manually written in. Lack of legal procedure conducting in this way is reflected in the fact that only in one of the procedures, in which the team had insight, it was precisely written in that the person against whom the procedure is conducted is not interested for offered legal assistance and/or eventual engagement of a lawyer out of Penitentiary. In the remaining part, these procedures satisfy certain legal standards.

(Ref. to par. 162)

An example from prison in Nis (with more than 1000 in-mates) can be an illustration: in the period of 6 months in 2007, there have been only 18 complaints filed by in-mates to prison disciplinary commission, regarding the ill-treatment by the security prison staff, of which only one was accepted as founded. It is also an illustration of prevailing opinion among in-mates that there is no use of filing complaints.

(Ref. to par. 170, 171, 172)

(1) The importance of medical service is dual-purpose and it should be always bared in mind. This service:

- Take care of the health of the prisoners
- Records and reports any sign or indication that prisoners may have been ill-treated and tortured

(a) The article 130/ Law on Execution of Prison Sanctions it is stated the obligation of the medical service to examine the prisoner after the restraint measures are implemented.

The article 103.6/ Law on Execution of Prison Sanctions/it is stated the obligation of the Medical service to keep special records about injuries of the prisoners. The team members did have access to these records. They were convinced that there was a compatibility between the patients' records of the prisoners and protocol on injuries. This protocol includes all types of injuries regardless the way they have been made. There are the following data: record number, name and surname of the prisoner, registry number of the prisoner in the penitentiary, the date-the hour and the day of the examination; the injuries are classified as slight and severe, made at work or out of work, self-injuring, or injuries caused by the official as well as the practitioner's name and injury description.

We have received records for period September-December, 2007, on numbers individually for each month according to the type and seriousness of injuries. In September there were 13, as well as in October, in November 21, in December 5. During this period there were 14 injuries made at work, out of work 31, self - injured 6, injuries caused by the official 1.

The CHR Niš team is certain that the number of injuries caused by restraint measures is at least 2 due to the fact that the injury of the ex-convict Draganović on October 22, 2007 had not been properly registered nor it was later revised. This implies to the lack of methodology in keeping records in which nobody is responsible for revising defaults made due to the non-compliance of certain members of the medical service.

The method of keeping these records does not include the monitoring of the data validity and as well as revising possible defaults beforehand.

(b) In order to have the health care of prisoners organized according to general health regulations it is necessary that it is integrated into the national health policy. This is the only way for the imprisoned to be treated without discrimination, compared with other citizens, in regard to receiving basic medical care. At the moment medical service is under the competence of the Ministry of Justice, it is subjected to the inspections by the Ministry of health and there is no rationalized cooperation of these two ministries, aimed at provision of health care of the patients/prisoners, in best possible way.

Competent departments in the Ministry of Health should be much more involved in following and control of the work of Medical Service in all prisons, not in the way that inspections come in more frequent controls, but that Medical Service work expertise and ethics in dealing with prisoners are continually checked by suitable methods. With an aim to equalize the prisoners' rights to adequate protection with the rights of other citizens/patients of the Republic of Serbia, it would be necessary to introduce Advocate of prisoners'/patients rights, in the prisons as well.

(c) When a doctor makes a mistake in work he is subjected to responsibility in front of disciplinary commission, according to the acting Law on Labor. Bearing in mind that doctors' mistakes can mean death of the prisoner as well, it is unacceptable that only sanction for that mistake is a reduction of salary (10, 20 or 30% in the period of 2 or 3 months). As well, disciplinary commission does not take into account "remand" in work negligence when speaking about doctors.