

# Mechanisms for the Prevention of Torture in the Western Balkans Albania, Montenegro and Serbia



**Building free of torture and impunity societies in the Western Balkans**

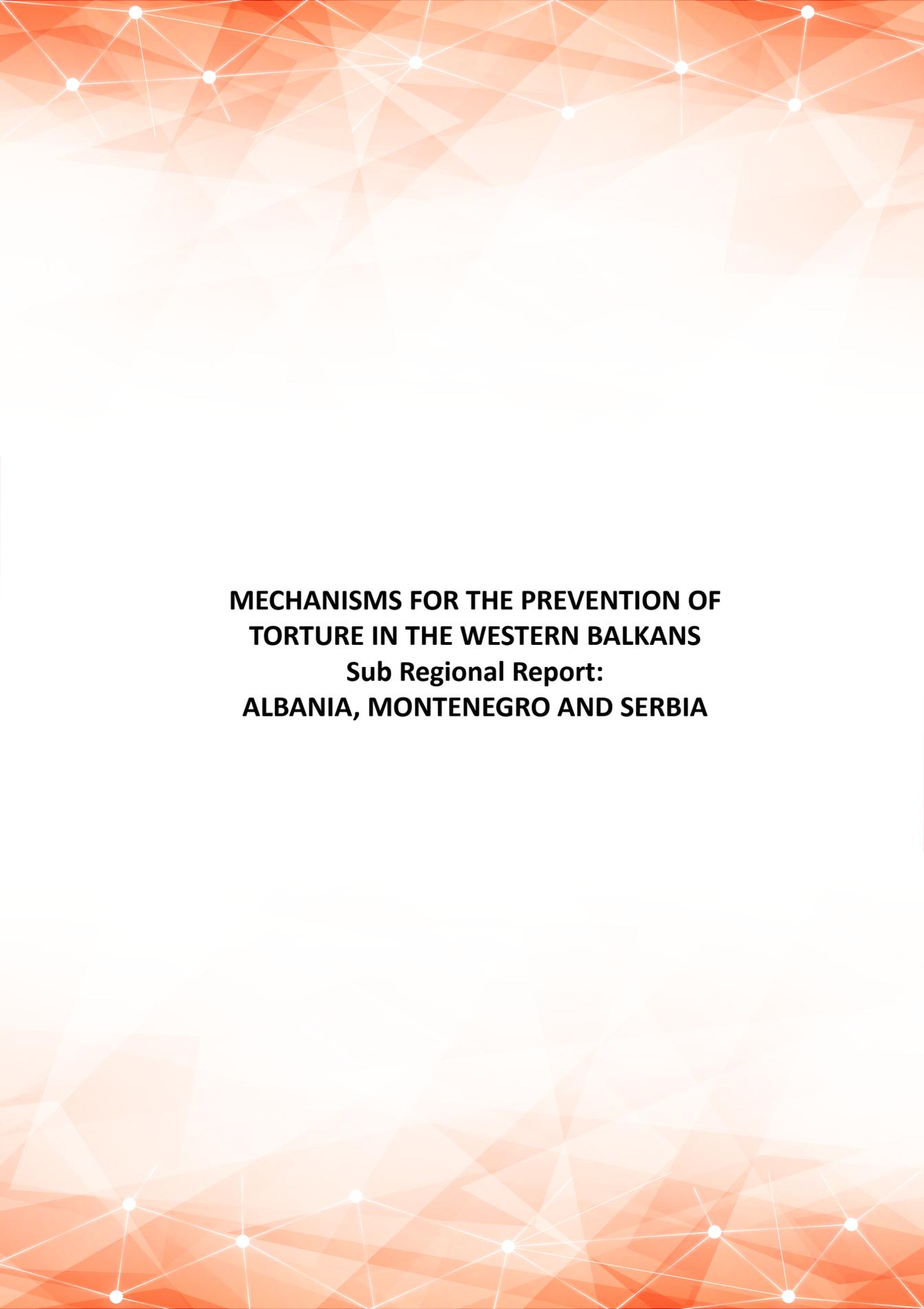


## MECHANISMS FOR THE PREVENTION OF TORTURE IN THE WESTERN BALKANS Sub Regional Report: ALBANIA, MONTENEGRO AND SERBIA



*Building free of torture and impunity societies in the Western Balkans*  
*An EU-funded project*





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TORTURE IN THE WESTERN BALKANS  
Sub Regional Report:  
ALBANIA, MONTENEGRO AND SERBIA**

**2016, June**

Youth Initiative for Human Rights (MNE), International Rehabilitation Council for Torture Victims (IRCT), Albanian Rehabilitation Centre for Trauma and Torture (ARCT), Youth Initiative for Human Rights (SRB)

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## **ABBREVIATIONS**

ARCT – Albanian Rehabilitation Centre for Trauma and Torture

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CSO – Civil Society Organization

EU – European Union

IRCT – International Rehabilitation Council for Torture Victims

NGO – Non-governmental organization

NHRI – National Human Rights Institution

NPM – National Preventive Mechanism

OPCAT – Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

UN – United Nations

UPR – Universal Periodic Review

YIHR – Youth Initiative for Human Rights

YUCOM – Lawyers Committee for Human Rights

## I INTRODUCTION

With the adoption of the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 18 December 2002, the international community demonstrated the political will to answer a global challenge with a wider global response, establishing clear mechanisms for swift and precise reaction.

If the rule of law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means, but should work together, concentrating on different aspects, as well as on similarities of their fight against torture. For this reason, we chose a regional approach, covering three countries within the region of the Western Balkans.

This report is one of the products of the YIHR's Project "Building Societies Free of Torture and Impunity in the Western Balkans", which is funded by the European Union and which aims to analyze and summarize the trends in the systems of protection from torture in three different countries of the Western Balkans. The countries chosen are Albania, Montenegro and Serbia and we can list numerous reasons for such a focus.

The report assesses national legislation, practices and experiences of the national experts in the field.

After drafting joint methodology, a comprehensive questionnaire was shared with project partners in the three target countries. Initial responses were commented upon and further information and clarification was sought from project experts. The results of this process were gathered during the second quarter of 2016.

Historically, all the countries involved in the project had totalitarian legacies for many decades and a number of problems, therefore the issues in the field of human rights also have their roots in those times. As a result, they inherited the criminal justice system that was formed under the communist regimes, which included penitentiary legislation, administration and infrastructure. This is particularly significant: as the analysis below demonstrates, their common features as states of the post-communist era still have a number of similarities in their systems. Over the years of their independence, all three countries have created some form of monitoring mechanism within the frame of the OPCAT. During the communist era, prosecutors had exercised monitoring, while the institutions of ombudspersons were created in the 1990s or early 2000s. Entrusted with wide mandates, the ombudspersons had difficulties focusing on monitoring the conditions of detention and on the prevention of torture. This was the result of either a lack of capacity, or prevalent interest in other matters, or of their working environment, including political factors. In most of the target countries, the democratic institutions are still struggling to function independently and effectively but have seen some progress over the last 10 years. Even in countries with stronger democratic features, the law enforcement bodies were somewhat opposed to public monitoring and judicial oversight.

The creation of National Preventive Mechanisms in these countries varies a lot in its chronology, and it is yet to be seen how the creation of the National Preventive Mechanisms<sup>1</sup> (hereinafter NPMs) will affect the respective civil society monitoring

1 Created under the auspices of OPCAT

mechanisms mid and long term. In many instances, where the democratic institutions have not, in general, developed according to the best traditions of independence and impartiality, the Ombudsman Plus system of NPMs still seems problematic. In many cases, the NPMs are not considered as effective as they are in some other countries regarding their impartiality and credible reporting.

The creation of the dual level of monitoring (NMP on the national and UN SPT on the international level) of the places of deprivation of liberty was thought to be a great idea for improving the system of torture prevention. However, the reality after 10 years of OPCAT implementation shows that the fighters against torture and the perpetrators of torture are in a constant battle with each other. In many cases, the national governments become more “creative” in hiding torture behind the populist rhetoric and, as a result, the NPMs become less effective and often dysfunctional. After the creation of a NPM, funds and resources should be committed for its proper functioning which, unfortunately, is not the case in all of the countries.

This report seeks to assess, in a comparative perspective, the legislative framework and conditions of detention before focusing on the complaints and monitoring mechanisms across the region, with a particular emphasis on the establishment of National Preventive Mechanisms under the OPCAT.

We have also singled out good practices from certain countries, underlining that the system is still under development and that first steps are showing promising results.

Country-specific conclusions and recommendations are interlinked with the recommendations for the region. For this reason, we strived to have recommendations on the level of each of the countries in focus, with a specific conclusion at the end on similarities and applicability of each of the country recommendation to the region as a whole.

## **II ALBANIA**

### **2.1. General Country Background**

Albania is a parliamentary republic established under the new constitution of 1998. Albania is a country with a long history of totalitarian regime and only after the protests in 1989 and the reforms made by the communist government in 1990, the People's Republic<sup>2</sup> was dissolved in 1991–92 and the Republic of Albania was founded. The communists retained a stronghold in the parliament after popular support in the elections of 1991. However, in March 1992, amid liberalization policies resulting in an economic collapse and social unrest, a new front led by the new Democratic Party took power.

In the following years, much of the accumulated wealth of the country was invested in Ponzi pyramid banking schemes, which were widely supported by the government officials. The schemes swept up somewhere between one-sixth to one-third of the country's population. Despite IMF warnings in late 1996, then-president Sali Berisha defended the schemes as large investment firms, leading more people to redirect their savings and sell their homes and cattle for cash to deposit in the schemes. The schemes began to collapse in late 1996, leading many of the investors into initially peaceful protests against the government, requesting their money back. The protests turned violent in February as government forces responded with fire. In March, the police and Republican Guard deserted and left their armories open, which were then promptly emptied by militias and criminal gangs. The resulting crisis caused a wave of evacuations of foreign nationals and refugees.

The crisis led Prime Minister Aleksandër Meksi to resign on 11 March 1997, followed by President Sali Berisha in July in the wake of the June General Election. In April 1997, Operation Alba, a UN peacekeeping force led by Italy, entered the country with two goals: to assist evacuation of expatriates and to secure the ground for international organizations. This was primarily WEU MAPE, who worked with the government in restructuring the judicial system and the police. The Socialist Party won the elections in 1997, and a certain degree of political stabilization followed.

In 1999, the country was affected by the Kosovo War, when a great number of Albanians from Kosovo found refuge in Albania.

Albania became a full member of NATO in 2009, and has applied to join the European Union. In 2013, the Socialist Party won the national elections. In June 2014, the Republic of Albania became an official candidate for accession to the European Union.

Albania has borders with Greece, Macedonia and Kosovo. According to data from the last census in 2011, the total population of Albania is 2,821,977.

According to the 2011 Census, the population of Albania declared the following ethnic affiliation: Albanians 2,312,356 (82.6% of the total), Greeks 24,243 (0.9%), Macedonians 5,512 (0.2%), Montenegrins 366 (0.01%), Aromanians 8,266 (0.30%), Romani 8,301 (0.3%), Balkan Egyptians 3,368 (0.1%), other ethnicities 2,644 (0.1%), no declared ethnicity 390,938 (14.0%), and not relevant 44,144 (1.6%).<sup>3</sup>

<sup>2</sup> The Communist regime was in place for over 45 years in Albania.

<sup>3</sup> <http://www.instat.gov.al/en/themes/population/publications/books/2012/main-results-of-population-and-housing-census-2011.aspx>

## **2.2. Applicable legal framework - from international norms to domestic legislation**

### **2.2.1. International treaties**

Albania has signed and ratified the following international conventions and treaties:

Within the framework of commitments for the protection of human rights and freedoms, the Republic of Albania has signed and ratified most of the conventions and international protocols of the UN and the Council of Europe, as well as a number of bilateral agreements in the criminal field.

- Convention on the Prevention and Punishment of Genocide, adopted on 12 May 1948;
- International Convention on the Elimination of all Forms of Racial Discrimination, entered into force in the Republic of Albania on 11 May 1994;
- Convention on the Non-Applicability of Statutory Limitation to War Crimes and Crimes against Humanity, entered into force on 19 May 1971;
- Convention for the Prevention of Torture and Cruel, Inhuman and Degrading Treatment or Punishment, entered into force on 11 May 1994;
- Statute of Criminal International Court, Roma 18 July 1998, ratified on 23 December 2002;
- UN Convention against Transnational Organized Crime, signed on 12 December 2000;
- Protocol on the Prevention, Pressure and Punishment of Person Trafficking, especially Women and Children, that additions UN Convention against International Organized Crime, ratified on 12 December 2000;
- Protocol against Emigrant Trafficking by Land, Sea and Air that additions UN Convention against International Organized Crime, ratified on 12 December 2000;
- The Statute of Council of Europe, ratified and entered into force in the Republic of Albania on 13 July 1995;
- Convention on the Protection of Human Rights and Fundamental Freedoms signed on 13 July 1950 and ratified on 2 October 1996.

Albania has also ratified Optional Protocols no. 1, 2, 3, 4, 5, 7, and 8 of this Convention, which were signed, ratified and entered into force on 2 October 1996. Protocol 11 of European Convention on the Protection of Human Rights and Fundamental Freedoms was signed on 13 July 1995, ratified on 2 October 1996 and entered into force on 1 November 1998.

### **2.2.2. Council of Europe membership**

- Albania became a member state of the Council of Europe on 10 July 1995.
- Albania Ratified the European Convention on Human Rights in 1996.

### **2.2.3. Death penalty**

The sixth Optional Protocol of the European Convention on the Protection of Human Rights and Fundamental Freedoms, regarding the abolition of death penalty, was signed on 4 April 2000, ratified on 21 September 2000, and entered into force on 1 October 2000.

Since 1992, when the last death penalty was executed, the death penalty was stipulated in the Criminal Code, but the implementation of this punishment was suspended. After the ratification of the sixth Optional Protocol of the European Convention on the Protection of Human Rights and Fundamental Freedoms, this punishment was substituted with life imprisonment. The twelfth and thirteenth Optional Protocols of the European Convention on the Protection of Human Rights and Fundamental Freedoms are in the process of ratification.

### **2.2.4. Judiciary**

According to Article 42/2 of the Albanian Constitution, every person, in order to protect his/her constitutional and legal rights, freedoms, and interests, or in the case of charges against him/her, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.

In addition, Article 43 and Article 44 of the Constitution guarantee that every person has the right to appeal a judicial decision to a higher court, except when the Constitution provides otherwise. Every person has the right to be rehabilitated and/or indemnified in compliance with the law if he/she has suffered damages because of an unlawful act, action or failure to act by the public officials.

Article 48 provides that everyone, acting on their own or with others, may submit requests, complaints or comments to the public officials, which in turn are obliged to answer within the time periods and under the conditions set by law.

Organization of the judicial system in the Republic of Albania is provided in the Part Nine of the Constitution, articles 135-147. According to Article 135, the judicial power is exercised by the High Court, as well as by the courts of appeal and courts of first instance, which are established by law. The Assembly may by law establish courts for particular areas, but in no case an extraordinary court.

Furthermore, Law no. 8436 of 28 December 1998 "On the Organization of the Judicial Power in the Republic of Albania" provides the organization of the judicial system, amended by Law no. 8546 of 5 November 1999 and by Law no. 8656 of 31 July 2000.

The hierarchical structure of courts

Articles 135 - 145 of the Constitution of the Republic of Albania provide the basic framework for the organization of the Court System. These provisions, coupled with applicable laws have given rise to the following system:

#### FIRST INSTANCE COURTS:

- **District Courts** have initial jurisdiction for both criminal (excluding serious crimes) and civil (excluding administrative disputes) cases. Their territorial jurisdiction extends to their respective Districts.
- **Court of First Instance for Serious Crimes** deals with serious crimes and has territorial jurisdiction over the entire territory of the Republic of Albania.
- **Administrative Court of First Instance** – there are 6 courts dealing with administrative law disputes, each responsible for their respective District.[4]

#### INTERMEDIATE COURTS:

- **Courts of Appeal**, which can review the decisions of lower courts for both criminal (excluding serious crimes) and civil (excluding administrative disputes) cases. Their territorial jurisdiction extends to given areas as defined by the President of Albania.
- **Court of Appeals for Serious Crimes**, which hears appeals for serious crimes and has territorial jurisdiction over the entire territory of the Republic of Albania.
- **Administrative Court of Appeals**, which hears appeals for administrative law disputes and has territorial jurisdiction over the entire territory of the Republic of Albania.[6]

#### HIGHEST COURTS

- **Supreme Court of Albania**, which hears appeals through the Civil Chamber, Penal Chamber and Administrative Chamber. In cases of great complexity or when giving a unifying decision for all lower courts to follow, the Supreme Court Judges hold court as part of a Unified Chamber.[7]
- **Constitutional Court of Albania**, interprets the Constitution and hears cases concerning alleged abuses of the human rights.

### 2.2.5. Domestic legislation prohibiting torture

#### Constitution

The human rights and freedoms are provided in the second part of the Constitution (articles 15-63). The main legal provisions relating to the protection against torture and punishment, or other cruel, inhuman, or degrading treatment are set forth in Article 25 of the Constitution: “No one may be subjected to torture, or cruel, inhuman or degrading punishment or treatment”.

Article 122 of Constitution grants ratified international treaties self-executing status in the domestic law. Since the UNCAT definition of torture and its criminalization is not sufficiently detailed internally, the Convention is not satisfied. Article 44 guarantees compensation to those who have suffered damages due to illegal action, or omissions, by state employees and bodies.

According to Article 4 of the Constitution, the law lays down the basis and the boundaries of the activity of the State. Similarly, Article 15/1 provides that the fundamental human rights and freedoms are indivisible, inalienable, and inviolable and stand at the basis of the entire juridical order.

### **Criminal code**

Torture and inhuman or degrading treatment are mentioned in a number of articles of the Criminal Code of Albania. The definition of torture is in Article 86 of the Criminal Code and it is in line with the definition of torture in Convention against Torture as formulated in the Article 1. Articles 58 & 59 of the Criminal Code stipulate the victim's right to request prosecution and compensation from the perpetrator and opens the possibility for the victim to participate as a party in the criminal case. Torture is also indicated in articles 74, 76 and 109a, 109b of the Criminal Code.

## **2.3. National Human Rights Institution, National Preventive Mechanism and other monitoring mechanisms**

### **2.3.1. National Human Rights Institution – The People's Advocate (Ombudsman)**

The People's Advocate (Ombudsman) Institution was envisaged for the first time in the Albanian Constitution adopted in November 1998, while the Law No. 8454 "On the People's Advocate Institution" (later amended) was firstly adopted by the Albanian Parliament on 4 February 1999. This law took into consideration the legislation of other European countries regarding the institution of Ombudsman. The Ombudsman is elected by a three-fifths majority of the National Assembly for a period of 5 years with the right to re-election.

According to the OPCAT (*approved by virtue of Law No. 9094, dated 03/07/2003*), the National Preventive Mechanism Against Torture carries out its activities based on a series of domestic acts, where two of the most important ones are the Constitution of the Republic of Albania and Law No. 8454 dated 04/02/1999 "On People's Advocate", as amended. These provisions envisage the core principles of inspection of the detention facilities and guarantee an activity compliant with the relevant international standards, whereas article 19/1 of Law No.8454, dated 04/02/1999 "On People's Advocate", as amended, authorizes an independent and comprehensive monitoring and investigation activity for each case of torture, inhuman and degrading treatment, ensuring to all officials a wider access to all premises without immunity, as well as to any documentation, even classified, of the public administration bodies.<sup>4</sup>

Further, other amendments by Law No. 9888, dated 10/03/2008, Law No. 8328 dated 02/04/1998 "On rights and treatment of prisoners and pre-trial detainees", provide additional freedom to the People's Advocate as the National Preventive Mechanism Against Torture (NPM) to accomplish duties during the control of penitentiary services. Article 74/1 of this law grants to the People's Advocate, in capacity of NPM, the right to

<sup>4</sup> Legal framework of the Albanian NPM is accessible in the following link: <http://www.avokatipopullit.gov.al/en/kuadri-ligjor>, last accessed May, 2016

supervise enforcement and implementation of the law on prisoners and pre-trial detainees as a special entity. The People's Advocate Office is allowed to regularly observe the treatment of individuals deprived of their liberty in the places of detention, arrest or imprisonment, with the view of strengthening, if appropriate, the protection of these individuals from torture, cruel, inhuman or degrading treatment or punishment. According to this provision, this Office has the right to specifically submit reports and recommendations to the respective bodies, in order to improve the treatment and conditions of detainees and to prevent torture and cruel, inhuman or degrading treatment or punishment.

### 2.3.2. NPM in Albania

The Republic of Albania has signed the Optional Protocol of the Convention against Torture and other Inhuman and Degrading Treatment (OPCAT)", and approved it by virtue of Law No. 9094, dated 03/07/2003, conferring to the People's Advocate competences to act in capacity of the National Preventive Mechanism Against Torture.<sup>5</sup>

In order to describe the Albanian NPM, one could rely on the information included in the People's Advocate official presentation: *"The National Mechanism for Torture Prevention deals with the conduction of inspections and visits to premises where individuals are deprived of their freedom in order to prevent the cases of torture or other inhuman or degrading punishments. This structure has been set up pursuant to the "Optional Protocol of the Convention against Torture and other Inhuman and Degrading Punishments" (OPCAT) ratified by the Albanian Assembly, Law No. 9094, dated 03/07/2007."*

In compliance with the OPCAT, early in 2008, the Parliament of Albania assigned to the Albanian People's Advocate (PA) the function of the National Preventive Mechanism against Torture (NPM) on the basis of a special law. The OPCAT ratification and establishment of the Albanian NPM remains a success story which was initiated as cooperation between the civil society and the PA under the motto "Albania without torture".<sup>6</sup>

The preventive approach stipulated in the Optional Protocol is based on the regular and periodic monitoring of places of detention through visits conducted by expert bodies in order to prevent abuses. In contrast, the PA only monitors the situation once they receive allegations of abuse.

A Torture Prevention Unit was created within the People's Advocate Office in January 2008 to assume the NPM mandate. The Torture Prevention Unit reports directly to the People's Advocate. According to the 2009 People's Advocate's Annual Report, the Torture Prevention Unit cooperates with the other sections of the institution.

On June 2009, the People's Advocate signed cooperation agreements with three non-governmental organizations. On certain occasions, joint visits were conducted to specific places of detention. The Torture Prevention Unit relied on specific expertise from the following organizations:

5 [http://www.apr.ch/en/opcat\\_pages/npm-designation-2/](http://www.apr.ch/en/opcat_pages/npm-designation-2/)

6 EU Progress Report on Albania, 2008, Section on Political and Civil rights, page 12

- The Albanian Centre for Rehabilitation of Victims, which provides forensic expertise to the Albanian NPM;
- The Albanian Helsinki Committee, which provides psychological and social work expertise to the Albanian NPM; and
- The European Institute of Tirana, which provides psychological, forensic and psychiatric expertise to the Albanian NPM.

It was reported that, in 2009, the European Institute of Tirana accompanied the NPM on all visits to pre-trial detention centers.

The People's Advocate reported that it has not been granted additional financial resources to conduct the NPM activities other than five additional members of the NPM staff. NPM activities are therefore carried out within the general budget of the Albanian People's Advocate, contrary to the country's obligations as set in OPCAT.

As a reminder, in 1994 Albania ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and in 1996, Albania ratified the European Convention for the Prevention of Torture (ECPT). As was mentioned earlier, Albania also ratified the Optional Protocol to the UNCAT (OPCAT) in 2003. Albania submitted its first initial report to the Committee against Torture (CAT) in 2003 and had a special session on the Universal Periodic Review (UN UPR) in December 2009. The Committee for the Prevention of Torture (CPT) under the Council of Europe has visited Albania eleven times, the latest visit being in 2014.<sup>7</sup>

The UN Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment (OPCAT) stipulates the introduction of independent monitoring schemes over places of detention. The Optional Protocol to the UN Convention against Torture (OPCAT) stipulates the establishment of a National Preventive Mechanisms (NPM) empowered under legal provisions to prevent torture through unannounced visits to any place of detention.

The preventive approach set forth in the Optional Protocol is based on the regular and periodic monitoring of places of detention, through visits conducted by expert bodies in order to prevent abuse.

Since its establishment, the Albanian NPM has been challenged by a lack of multi-disciplinary professional expertise, a lack of financial resources, and a lack of monitoring methodologies, which were minimized through cooperation with professional organizations that offered medical, psychological and psychiatric experts to joint monitoring visits. As a result, the NPM has been supported by CSOs to become functional through its roles, mandates and clear methodologies for the OPCAT implementation, and it continuously increases the scope of work and activities with different places of detention.

Nowadays, the NPM has been experiencing staff turnovers: changes have affected the position of the head of office and the majority of the monitoring staff. Although without a

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<sup>7</sup> <http://www.cpt.coe.int/en/states/alb.htm>

Memorandum of Understanding, ARCT has put great emphasis to the preventive monitoring visits to places of detention – through a well-defined methodology and standard screening instruments regarding data collection and analysis.

Even though the PA conducts many visits to places of detention, there is no consistent and comprehensive visitation system, which could classify the visits as full, periodic and regular, or ad-hoc inspections. Also, while there are no general criteria on the length and regularity of full visits, given the capacity of detention facilities that exist in Albania, full inspection visits should last a minimum of two days and be conducted at least twice a year. New legislative amendments were expected to happen with regards to better functioning of the People’s Advocate Office, although no public discussions were organized regarding these amendments.

### **2.3.3. Prosecutorial oversight**

At the prisons of high security, prosecutors that are authorized by the General Attorney carry out the inspections. In all categories of law enforcement institutions and relevant regulations, the control task is vested to the Inspection Council, established by the Law “On the Execution of Criminal Sentences”. Based on a request or claim, the Inspection Council is entitled to make all the necessary verifications, and upon them, it may demand undertaking of actions by the head of the institution, or recommend the prosecutor to exercise its competences or to present its requests directly to the competent court.

The prosecutor should observe directly, periodically or without warning the penitentiary institutions, assisted, when necessary, by specialists of relevant fields. With regards to his findings, and the irregularities and obstacles met during the proceedings, the prosecutor submits a request to the head of the institution, aiming at the reestablishment of law or rules infringed, the attainment of sentenced person’s rights, as well as the initiation of disciplinary, administrative or compensation procedure, unless the circumstances require the initiation of criminal proceedings.

Article 1 of the Criminal Procedural Code provides that “...the criminal procedural legislation is to provide a fair, equal and due legal process, to protect the individual freedoms, rights and legal interests of citizens, and to contribute to the strengthening of the rule of law and to the application of the Constitution and laws ruling the country.

### **2.3.4. Role of NGOs**

In Albania, NGOs working to promote and protect Human Rights are quite active. The Albanian Centre for Human Rights (ACHR) runs projects providing human rights training for police, law practitioners, journalists, etc. Other NGOs that offer training in the field of protection of human rights and fundamental freedoms include the Children’s Human Rights Centre of Albania (CRCA) and the Legal Clinic for Minors (these NGOs also offer free legal assistance to children). AHC and the CRCA offer “hotlines” or complaint centers where victims can bring their complaints which could be, if appropriate, brought to the authorities’ attention and publicized; legal advice is also available. The Albanian Helsinki Committee has a program for monitoring prisons, police stations and detention centers, while the other NGOs have also monitored these institutions.

The Albanian Centre for the Rehabilitation of Torture provides specialized medical and psychiatric treatment, social and legal support for torture victims, and also organizes training for professionals (human rights educators, medical staff, prison staff etc). In its current activities, the ARCT offers specialized medical and psychological treatment as well as legal assistance to the torture victims and their relatives; it organizes awareness campaigns, round tables, reflection groups, trainings and other activities, in order to prevent the probability of disguised forms of torture; it conducts research studies in order to define characteristics of the Albanian cultural background related to the concept of different forms of torture; and distributes different materials related to cases of trauma, torture, mental health and the human rights. ARCT has MOUs and permissions to perform monitoring in places of deprivation of liberty: police (2010 onward), detention and prisons (2009 onward).

### **2.3.5. International organizations**

International organizations continuously recommend that Albania should take immediate steps to improve its control role on the justice institutions and police and health institutions, in order to make them put decisions into practice and separate responsibilities.

Amnesty International (AI) has expressed a great concern in its 2015 annual report that *Ill-treatment of suspects in police stations was widespread; police and medical staff failed in their duty to report such incidents. In July, the Ombudsperson reported on chronic overcrowding and inadequate conditions and health care in places of detention.*<sup>8</sup>

The EC Report (2015) states that: “On prevention of torture and ill-treatment, in 2014 the national preventive mechanism (NPM) conducted 115 inspections, checks and monitoring visits. The 81 resulting recommendations were acknowledged, but most have not been addressed. In 2014, the NPM and the Ombudsman’s Office handled 35 complaints about disproportionate use of force and violence by police officers and prisons guards, of which eight were found to have valid grounds. Very few investigations were launched against police officers. In some prisons, special care units providing psychological support have been set up. No progress has been made on setting up a specialized medical institute to treat mentally ill detainees, who continue to be kept in inadequate conditions in detention in the Kruja prison hospital. Further action is needed to ensure specialist treatment for this vulnerable category of prisoners in all facilities.

Overcrowding of the prison system remains a concern.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was set up under the 1987 Council of Europe Convention of the same name (hereinafter “the Convention”). According to Article 1 of the Convention: “There shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment... The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.” The work of the CPT is designed to be an integrated part of the Council of Eu-

<sup>8</sup> <https://www.amnesty.org/en/documents/pol10/2552/2016/en/>

rope system for the protection of human rights, placing a proactive non-judicial mechanism alongside the existing reactive judicial mechanism of the European Court of the Human Rights.

In January 2014, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) performed its periodic visit to Albania.<sup>9</sup> Regarding the material conditions of detention in the police establishments, the CPT has noted some progress. In particular, all holding cells (intended for a stay of up to ten hours) in the establishments visited were now equipped with means of rest (a chair or a bench). Further, at Tirana Regional Police Directorate and Korca Police Station, the general conditions of detention have been raised to an acceptable level. However, detention conditions remained extremely poor in all the other establishments visited (i.e. Police stations at Elbasan, Pogradec, Saranda, Vlora and Tirana Police Stations Nos. 1 and 2). Most of the custody cells in these establishments were found to be in a deplorable state regarding maintenance and hygiene and had very limited access to natural light. Moreover, artificial lighting was often dim or non-existent, the ventilation was inadequate and the heating system was not functioning. In particular, at the Tirana Police Station No. 1, detained persons were on occasion being held in extremely cramped conditions (e.g. four persons in a cell of 5m<sup>2</sup>).

The CPT calls upon the Albanian authorities to undertake urgent measures in order to remedy the above-mentioned deficiencies.

No allegations of recent physical ill-treatment of prisoners by custodial staff were received in any of the establishments visited and, on the whole, the relations between the staff and the inmates appeared to be free of tension. Furthermore, the delegation found no indication which would suggest that inter-prisoner violence was a major problem in the establishments visited. However, at Peqin Prison, the delegation heard a number of allegations of physical ill-treatment of prisoners by members of the central prison administration's special intervention unit in the context of cell searches.

## **2.4. Response - Cases of torture**

Torture is criminalized according to Article 86 of the Criminal Code. According to the annual reports and analysis of activity of the Albanian Public Prosecutor, the number of complaints following investigations vary from 2 in 2012 to 1 in 2013, 2 in 2014, and 2 in 2015, but none of these cases have a final court decision as torture. The data shows,<sup>10</sup> however, that the Albanian State police have more than 230 police officers with disciplinary measures, including the ones who have been "punished" by the courts under the Article 250 of the Criminal Code.

The legal aid support for the victims of torture or inhuman and degrading treatment was provided by ARCT in the following major criminal court cases concerning torture and ill-treatment, where proper investigations according to international standards have not been conducted by the authorities.

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<sup>9</sup> <http://www.cpt.coe.int/documents/alb/2016-06-inf-eng.pdf>

<sup>10</sup> Referred to the official data reported by the Albanian State, February 2016

### **The case of P. S. (torture)**

This case was documented by the ARCT and the People's Advocate NPM on 31 December 2009. The interview was taken from 13.45 to 14.15, at the Tirana General Police Directorate in the presence of P.S, born in 1982, from Tirana, Rruga Kongresi i Lushnjës. He reported grave physical and psychological consequences as the result of being subjected to police violence by the Commissariat No 2.

P.S. was assisted by the experts as he could not move his arms because of the pain. P.S. had contusions, lacerations, and lesions caused by beating in the arms, face and body. The monitoring group documented the case and drafted recommendations for the next steps to be taken.

### **The case of S.M. (torture)**

The violent act against S.M. happened on 10 December 2009. The ARCT monitoring team accompanied by the People's Advocate documented this case by interviewing the detained S.M, 20 years of age, born on 13 April 1989 in Tropoja, from Tirana, with elementary education and single. The act happened around 22.30, at a distance of 150 meters near the victim's house at the Kinostudio area in Tirana. S.M. was under house arrest for the criminal act of stealing a car. He was found by the police breaching his house arrest in the company of a few friends; he was forcefully stopped by gunshots by the police agents of the Commissariat no. 4.

The case was evidenced and documented in compliance with the Istanbul protocol requirements. S.M. was brought before the court on 13 December where he was sentenced to imprisonment on the accusation of breaching the house arrest and also violence against the head of the criminal investigation of the Commissariat no. 4. Despite the complaint from his lawyer, S.M. was transferred to Mine Peza pre-detention center.

### **The case of D.T. (acid attack)**

This case involves an acid attack: on 29/07/2009, unidentified aggressors threw acid in the face and other visible parts of the body of D.T. and her colleague (co-worker). The attack happened at a time when D.T. was involved in a difficult divorce that resulted in major disagreements with family relatives of her ex. A criminal case was registered (no. 3985 from 29/07/2009) in Tirana at the prosecutor's office who filed the criminal case no. 2755 on 29/07/2009 for the offence "Intentional serious injury", as stipulated by Article 88/2 of the Criminal Code (without having identified the suspect).

D.T. was hospitalized in bad conditions at the Public Hospital "Mother Teresa" in Tirana. After exhausting domestic remedies, the case was brought before the European Court of Human Rights, as the Application no.48756/14 Teršana v. Albania.

Detention monitoring data and the human rights screening instruments have identified the following information regarding cases of violence and ill-treatment during arrest, in detention or in prison. The data reveals the following:

	Cases of violence during arrest	Violence in custody	Violence in detention
2013	211 out of 439	179 out of 439	25 out of 180
2014	141 out of 420	203 out of 350	35 out of 140
2015	78 out of 130	117 out of 330	35 out of 250

### Case Pihoni v. Albania Application no.74389/13

On 6 August 2012, the applicant witnessed a forceful verbal exchange between N.P, a family relative of his, and A.S. in one of the main streets of Pogradec. The applicant’s intervention to calm down N.P. and A.S. was unsuccessful. The verbal exchange became increasingly heated and ended in physical violence. After the eruption of physical violence, a special police unit of the Rapid Reaction Force (“RRF”) arrived at the site and intervened to stop it. As a result, the applicant and the other two individuals were detained. On the way to the police station, the applicant alleges that he was offended, threatened and ill-treated by the RRF police officers. His requests to be taken to the hospital to receive medical treatment were left unanswered. On 7 August 2012, the applicant was released from detention. He went into a medical center because he was feeling unwell. The medical examination found that the applicant had been injured by a hard, blunt object, which had caused him a wound that had to be sutured, three scratches, an oedema and an ecchymosis. The above injuries resulted in the applicant’s incapacity to work for nine days.

There is no specific provision in the CCP for a right to appeal against the prosecutor’s decision staying a criminal investigation. By Decision no. 4 of 18 January 2013 the Constitutional Court stated that no remedy existed under the domestic law against a prosecutor’s decision of staying the criminal investigation. The applicant stated his complaints under Articles 3 about the injuries he sustained as the result of the police intervention, and about the fact that the investigation into the identification and punishment of the perpetrators was not effective.

## 2.5. Places of detention

### – The Albanian State Police/ under the Ministry of Interiors

Albania’s 2007 Law on the State Police (Law No. 9749 from 04/06/2007 on State Police) indicates that the ASP is an institution under the jurisdiction of the Ministry of Interior (Albania 2007, Art. 6). According to Article 12 of the law, the police are organized centrally and locally; the General Directorate oversees the central level, while the Regional Directorates and the Regional Border and Migration Directorates administer functions at the local level (ibid, Art. 12, 13). The General Director of the Police, who is appointed by the Council of Ministers at the recommendation of the Minister of Interior, is in charge of the General Police Directorate (ibid, Art. 13, 20). According to the government of Albania, in a document published on the Interpol website, the General Directorate of the ASP comprises of the following departments: the Criminal Investigation Department, the Public Security Department, the Border and Migration Department, the Support Services Department, and the Police Training Department (ibid. n.d.b).

Regional Police Directorates, which are composed of Commissariats, carry out the directions of the General Directorate, coordinate training and personnel matters, and supervise the Commissariats and police stations within their region (Albania 2007, Art. 14, 15). Sources report that there are 12 Regional Police Directorates in Albania (ibid. n.d.b; OSCE 21 Aug. 2015). According to the government of Albania, there are 43 Commissariats within the ASP; each Regional Directorate comprises of 3 to 6 Commissariats (Albania n.d.b). Sources indicate that the number of Regional Border and Migration Directorates in the country is between 7 (OSCE 21 Aug. 2015) and 8 (Albania n.d.b). For more information on the structure of the ASP, see Response to Information Request ALB103820.

In correspondence with the Research Directorate, a representative from the Organization for Security and Co-operation in Europe (OSCE) in Albania stated, without providing further detail, that “the Albanian State Police is under restructuring, following the adoption of the new Law on State Police on 31 July 2014” (OSCE 21 Aug. 2015). According to the European Commission’s Albania Progress Report for 2014, the Albanian Law on State Police was amended in September 2014 “to provide for the creation of a National Bureau of Investigation, tasked with investigating corruption-related offences” (EU Oct. 2014, 43). A copy of the amended Albanian Law on State Police could not be found by the Research Directorate within the time constraints of this Response.

In 2014, the Law on State police was re-amended, providing further competencies to police authorities; a new police reform started in early 2015 and it is still continuing.

#### – Police detention

Article 13 of the 2007 Albanian Law on State Police indicates that the General Directorate of the Albanian State Police is located in the capital city of Tirana (Albania 2007, Art. 13). The government of Albania indicates the locations of each of the 12 Regional Police Directorates.

#### – Prisons

The Albanian Prison System is part of the Justice System in Albania, which includes a significant number of institutions and organizations. These organizations operate within a framework of constitutional and legal rules that define not only their power, but also the limits and instances of institutional interaction between them, for the purpose of justice implementation. After nearly 21 years of political pluralism, it is quite interesting to analyze how the services offered in the prison system have materialized and influenced the treatment of persons deprived of their liberty, and what is the contribution of this system in the development of the Albanian society.

The Albanian Prison System is regulated by Law no. 8331, dated 21/04/1998, “On the execution of criminal penalties”, Law no. 8328, dated 16/04/1998, “On the rights and treatment of prisoners”, as amended. In addition to these laws, important regulations governing the functioning of the institutions of the penitentiary in Albania were adopted, including: Decision of the Council of Ministers no. 96, dated 03/09/2000 “General Regulation

of Prisons”, Order of the Minister of Justice no. 3705/1, dated 11/05/2006 “Rules of Detention”, the Order of the Minister of Justice no. 4595, dated 15/07/2003, “ Internal Regulations of the General Directorate of Prisons “, Order of the Minister of Justice no. 3052/1, dated 25/05/2005 “Code of ethics for prison Staff”, the Council of Ministers Decision no. 327, dated 15/05/2003 “Regulation of Prison Police Headquarters “.

Reform of the Prison Law has continued with the adoption of Law no. 9888, dated 10/03/2008 “On some Amendments and Additions to Law no. 8328 of 16/4/1998, ‘On the rights and treatment of prisoners’”, as amended. This law brought changes which improve the security of the basic rights of the prisoners and their human treatment, in accordance with the European standards.

To facilitate the implementation and monitoring of these rights, the law established rules for the organization and functioning of the General Directorate of Prisons. An amendment of this law was the creation of the National Mechanism for the Prevention of Torture or Cruel, Inhuman or Degrading treatment, as a separate structure under the administration of the Office of the Ombudsman.

Prisons and pre-imprisonments are places where persons are deprived of their liberty and their contact with the outside world is limited. Their communication is limited, due to the lack of daily activities and rituals done before entering the prison, and due to activities done in accordance with the prison rules, which define the limits of a person’s behavior inside the facility. Decisions of the Albanian prison system are not easy, because the investments and strategies in this system are done with two goals in mind: flexibility in treatment on one hand and the creation of a safe system for the outside society on the other.

According to the General Directorate of the Prison System, “The system of penitentiary institutions is one of the subjects that have been thoroughly improved by the democratic reforms. These improvements have occurred in parallel with the conceptual, logistical, financial and infrastructural changes. Nowadays, we are working to transform the perception of the penitentiary institutions from penalty institutions to institutions for the reintegration of prisoners in society. “Institutions are being classified into high-security, medium and low security prisons, individual institutions and detention centers. Currently the country has 23 penal institutions, classified as follows:

- 5 high security institutions
- 5 medium security institutions
- 10 pre-trial detention centers
- 3 special institutions:
  - Prison Hospital
  - Juvenile Institution in Kavaja
  - Special Institution in Kruja

The maximum capacity is 4537 people, while overcrowding has been very large- up to 5931 people on average throughout the year. The penitentiary institutions vary in age and quality. Institutions that were inherited from the previous system have a weak infrastructure and do not meet the standards for humane treatment of persons deprived of their liberty (Institute of High Security in Burrel, Detention 313 in Tirana, High Security Prison in Beçë, etc.). Especially in the old institutions, there are some common facilities for leisure activities, inside and outside the detention area, where prisoners could join the others.

In its 2014 mission report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended that: “A concrete plan must be developed for addressing the services, treatment and material prisons conditions. The strategy policy should address measures and means for joint activities, from-to cells, visits (open and closed), the reception units and a range of other units that allow proper classification of prisoners “.

According to the official data published online by the General Directorate of Prisons:  
<http://www.dpbsh.gov.al/newweb/?fq=brenda&m=shfaqart&gj=gj1&aid=566>

	Pre	Pris
<b>Fier</b>	60	356
<b>Ali Demi (G)</b>	51	58
<b>Mine Peza</b>	211	11
<b>Vaqarr</b>	156	3
<b>Burrel</b>	80	128
<b>Fushë Kruja</b>	280	129
<b>Durrës</b>	313	50
<b>Korçë</b>	185	294
<b>Sarandë</b>	61	
<b>Tropojë</b>	10	12
<b>Kukës</b>	23	
<b>Lezha</b>	325	485
<b>Peqin</b>	12	738
<b>Elbasan</b>	203	
<b>Tepelenë</b>	103	24
<b>Vlorë</b>	198	
<b>Rrogozhinë</b>	151	251
<b>Berat</b>	110	
<b>Kavajë</b>	24	9
<b>Spitali</b>	61	
<b>Jordan Misja</b>	422	
<b>Lushnja</b>		232
<b>Kruja</b>		112
<b>Total</b>	3039	2892
	5931	

**Detention conditions:**

With regards to the penitentiary system, despite improvements in some of the prisons and pre-detention institutions, the issues of overpopulation, occurrence of human rights violations, impunity, level of staff training, respect for law provisions, and inadequate health and social services are raised in almost every report of the EU agencies and the State Department for the situation in detention places in Albania. Preliminary results of an ongoing ARCT/RCT survey on prevalence of torture in places of detention is showing a problematic situation in almost all of the 21 penitentiary institutions in the country,<sup>11</sup> especially in some of the older prisons such as Burreli, 313 Prison in Tirana and pre-trial detention centers such as Kukesi and Lushnja.

Regarding the detention conditions and premises in police commissariats, the situation remains critical: financial shortages were present, as were delays in disbursements and problems with the payment of extra hours for police officers. Although there is no definition regarding the police cell, it is generally considered as “any room within a police facility/commissariat or station, used or intended to be used for forced detention of an adult for longer than ten hours until the time that [s]he is released, bailed, or arraigned”.<sup>12</sup>

Although the pressure from the civil society actors was high, the law amendments have not been finalized by the Ministry of Justice, creating difficulties in managing specific situations. The passing of the amendments in the Criminal Code by the government were considered positive for the spirit of the punitive measures, yet the applicability of these amendments is still waiting for further administrative and technical interpretation in practice. Various police inspection reports in different districts documented unsuitable detention conditions and treatments of detainees in police cells, including: overcrowding and long stays for persons in the police cells, substandard physical conditions and design faults, lack of access to health and mental health care, vulnerable persons being inappropriately held in police cells, abuse of detainees, poor sanitary conditions especially for women held in detention, lack of adequate accommodation, juveniles being held with adults, and absence of consistent training in duty of care and custodial role of the police staff. The monitoring of conditions of detention in the police commissariats is considered important because persons in police custody are mostly pre-charge suspects; also, having temporarily lost their freedom, detainees have limited recourse to any remedy or assistance.

Considering that many police officers appear reluctant to perform their custodian role, one could understand the lack of scruples they have about humanely treating suspects in their custody, and the potential abuses detainees can experience in a police lockup. It is difficult to imagine the police respecting the human rights of detainees without an external monitoring system. This is the reason for a continuous monitoring process.

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11 A new pre-detention facility in Elbasan was opened in September 2012, although facing budgetary constraints.

12 Compare: Alternative Report to the Second Universal Periodic Review on Albania, and recommendations accepted by Albania, during the first UPR Review at Session 6 (30 November - 11 December 2009), Albanian Rehabilitation Centre for Trauma and Torture (ARCT) September, 2013

## 2.6. Areas of concern<sup>13</sup>

*1. Legal Due Process:* There are numerous obstacles in detainee legal representation that not only interfere with detainees' ability to secure representation, but impact the attorney-client relationship itself: a. Breaches of attorney-client privacy and confidentiality by detention center guards during interviews and through monitoring of mail and telephones b. Lack of notification of attorneys and family members of detainees when they are transferred to other facilities.

*2. Medical Care:* Approximately 75% of detainees interviewed reported medical problems that required medical attention. Eighty percent who sought care were dissatisfied with the treatment they received. Our interviews suggest a widespread problem of inadequate access to medical care, especially emergency medical care. Inadequate access to medical care violates the United Nations Declaration of Human Rights and the minimum standards of the UN Principles for Detained Persons. Allowing a person to suffer from extreme pain without treatment is cruel, inhuman and degrading treatment, a violation of both the international law and Article 87 of the Albanian Criminal Code.

*3. Mental Health Care:* About 23% of the detainees interviewed reported that they suffered from mental health issues requiring attention. While many did not complain they suffered from depression, their speech and body language suggested otherwise. Our interviewer's general impression was that a substantial percentage of the detainees appeared depressed, nervous, or had a combination of disorders.

There also appears to be improper and excessive use of solitary confinement of those who suffer from mental health problems. In the special institute of Kruja, there is a lack of recreational activities; grey cement and windowless surroundings; a lack of privacy; social isolation; and uncertainty regarding their detention confinement, which all contribute to mental health instability.

The GDP employs only two psychiatrists throughout the system.

Inadequate treatment of the mentally ill is a violation of the international law. Denying proper treatment can be considered as cruel, inhuman and degrading treatment. Under the domestic law, prisoners have the right to receive medical treatment for illness and injuries, which encompasses the right to psychiatric and mental health care and the right to be protected from self-inflicted injuries such as suicide.

*4. Deaths in detention:* The rise in apparent self-inflicted deaths is particularly worrying, reflecting as it does the chronic despair of the individuals concerned, but it is also troubling that prisons, in particular, are now having to care for an increasing number of people who are growing old and dying of natural causes in their care.

Each death, of whatever cause, is a matter of immense sadness to family and friends and a

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13 Compare: Seattle University School of Law - voices from detention: A Report on Human Rights Violations at the Northwest Detention Center. This document was used as a methodological guideline for the research on areas of concern in Albania.s

cause for reflection in our monitoring about what more could have been done to prevent an unnecessary death or to provide a better care for the dying. Therefore, spotting potential trends and seeking to learn lessons is important.

### **Access to health care by people deprived of liberty**

The availability of care and treatment for people with mental illness is an area of particular interest to the authorities of the implementation of OPCAT, considering how widespread the mental health issue is among the people in custody. Prisoners have the right to the same standards of health care as those available to others in the community. However, they often come from vulnerable sectors of the society, with high and complex health needs, and a much higher prevalence of serious mental illnesses and substance abuse problems than the general population.

There is a particular need to ensure availability and access to premises and services. In general, there is a need to ensure that people are placed in an environment that is able to provide the level of care and therapeutic treatment that they require.

A significant achievement was the inclusion of prisoners in the social insurance scheme, creating an opportunity for a good health treatment. Approximately 75% of the interviewed prisoners reported medical problems that required medical attention. Out of the people seeking this care, 80% were dissatisfied with the treatment they received.

The implementation of the legislative and institutional reforms has been a process that had significant improvements and measurable results recently, especially in terms of designation and implementation of the rehabilitation programs for prisoners, aiming at their education, vocational training, employment and inclusion in different educational and creative activities. In addition to the role of decision enforcement, an important objective of the prison system is the humane treatment, legal and non-discriminatory aspects for all the prisoners. The Albanian Prison System is regulated by law no. 8331, dated 21/04/1998 "On the execution of criminal penalties" and law no. 8328 dated 16/04/1998 "On the rights and treatment of prisoners", as amended. In sequence of these laws, important regulations regarding the operation of the institutions of execution of penal decisions in Albania were adopted, including: Decision of the Council of Ministers no. 96, dated 09/03/2000 "General Regulation of Prisons", Order of the Minister of Justice no. 3705/1, dated 11/05/2006 "Rules of Detention", Order of the Minister of Justice no. 4595, dated 15/07/003 "Internal Regulation of the General Directorate of Prisons", Order of the Minister of Justice no. 3052/1, dated 25/05/2005 "The code of ethics for prison staff", The decision of the Council of Ministers no. 327, dated 15/05/2003 "Regulation of the Prison Police Staff".<sup>14</sup> Penitentiary law reform continued with the adoption of law no. 9888, dated 10/03/2008 "On amendments and additions to the law no. 8328, dated 16/04/1998 "On the rights and treatment of prisoners", as amended. This law brought changes in improving the guarantee of basic rights of prisoners to their humane treatment with dignity, in accordance with the European standards. To enable the implementation and monitoring of these rights, the law

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<sup>14</sup> Tëdrejtat e njeriut në Sistemin e Paraburgimit në Shqipëri 2007, Shoqata Për thyerjedhe Penal Reform International Romania, TARTARI, Tiranë 2008

established rules for the organization and functioning of the General Directorate of Prisons. An innovation of this law was the creation of the National Mechanism for the Prevention of Torture or Cruel, Inhuman or Degrading Treatment, as a special structure under the administration of the Ombudsman Office.<sup>15</sup>

In the Manual of high management of prisons, the work done by prison staff was appreciated and at the same time was stated that the public opinion should be reminded that the work done in prisons is an important public service. As has been noted in various international reports on the management of the prison system, the organization of these institutions is specified as the most complex and their problems are among the most difficult ones. Based on the axioms of interpersonal communication, the level of content of the message and the level of relations between staff are seen as important elements in this system. Communication failure on these two levels compromises the integrity and safety of the prison system as a whole.

## **2.7. Recommendations**

### **Regarding the prevention of torture**

1. Reduce crowding. The Albanian Government must commit to eliminating the crowded conditions that exist in various prisons; the constant opening of new penitentiary institutions has not solved this problem.
2. Use force only as the last resort. Dramatically reduce the use of non-lethal weapons, restraints, and physical force by using non-forceful responses whenever possible, restricting the use of weaponry to qualified staff, and eliminating the use of restraints except when necessary to prevent serious injury to self or others.
3. Employ surveillance technology in all places of deprivation of liberties. Make good use of recording surveillance cameras to monitor the correctional environment, and include more investments in this respect.
4. Use objective classification and direct supervision. Incorporate violence prevention in every facility's fundamental classification and supervision procedures.
5. Promote productivity and social rehabilitation. Invest in pre-and-post release programs that have been proven to reduce violence and to change behavior over the long term.

### **With regards to limiting inhuman treatments:**

Overcrowding inevitably consumes human and financial resources. Little is left for social rehabilitation programs, sanitation, hygiene, and food. The result is an increased disorder, violence, and corruption. The figures are the result of strict laws which are passed and implemented and the reluctance to utilize alternatives to incarceration in permanent basis. The justice system does a poor job of providing due process for the accused. Slow processing of the criminal cases and inadequate legal defense lead to systematic violation of due process rights, particularly the international time limits on pre-trial detention.

Many Albanian penitentiary facilities of all sizes and security levels provide inadequate

15 Shih faqenzyrtaretëDrejtorisësëPërgjithshmetëBurgjeve

material conditions, general health care, and mental health care, and fail to meet the basic needs of prisoners, such as sanitary facilities.

**With regards to a functional health care system:**

1. Protect mentally ill prisoners. Prisoners with a mental illness that would make them particularly vulnerable to conditions in detention must be housed in secure therapeutic units. Facilities need rigorous screening and assessment tools to ensure the proper treatment of prisoners who are both mentally ill and difficult to control; a guarantee of psychological services should be present at all levels.
2. All detention facilities should have the necessary personnel, including medical personnel. They should commit to caring for persons with mental illness, and identify and treat those experiencing mental problems in detention.
3. All persons in custody should have the right to be examined, if the person concerned so wishes, by a doctor of his/ her own choice. During these examinations there should not be any guards or prison authorities present.
4. Clear instructions should be given about the authorities' approach towards the acts of torture and adequate training on prohibition against torture should be provided to judges and prosecutors, in order to ensure overall implementation of the Convention (UNCAT).

**With regards to investigation:**

In light of serious ill-treatment cases, which have occasionally resulted in death, it is recommended to eliminate the climate of impunity of law enforcement personnel who commit the acts of torture and ill-treatment, and to ensure a strict application of articles 86 and 87 of the CC on torture prohibition, in compliance with the ratified international acts and the respective recommendations of the human rights organizations.

**With regards to restorative approaches:**

1. Promote a culture of mutual respect. Create a positive culture in prisons that is grounded in the ethic of respectful behavior and interpersonal communication that benefits both prisoners and staff.
2. Recruit and retain a qualified staff. Enact changes at the state and local levels to advance the recruitment and retention of a high quality, diverse workforce and otherwise further the professionalism of the workforce.
3. Ensure that senior staff in the prison administration headquarters and the directors of all institutions and their senior managers possess and make full use of copies of the Council of Europe's European Prison Rules. Copies should also be kept prominently in each prison library for the use of all other staff and prisoners.
4. Develop reporting. The legislation should support meaningful data collection, and state and localities should fully commit to this project.
5. Require correctional impact statements. The government should mandate that an impact statement accompany all proposed legislation that would change the size, demographics, or other pertinent characteristics of the prison population.

## **Other recommendations**

- Undertake an assessment of domestic inspection bodies and their compliance with OPCAT requirements;
- Require human rights proofing in all legislation concerning the places of detention;
- Foster civil society involvement in decision-making regarding prison, law enforcement, mental health and other reforms through establishment of permanent expertise;
- Establish a permanent working group/sub-groups with the participation of state and non-state actors to regularly address different aspects of places of detention;
- Consider the revision of categories of visits, such as introduction of full inspection visits (announced) to facilities at least twice a year for each facility, follow-up visits and ad-hoc visits (unannounced);
- Publish detailed statistics and collect disaggregated data on complaints by gender, language, location, institution, etc. about the current situation of places of detention in Albania, accessible to all stakeholders with due respect of personal data protection;
- Target police short-term detention cells for unannounced visits, especially outside the official working hours;
- Issue guidelines on inspection visits to places of detention (Office of the Prosecutor General);
- Include statistics on complaints from places of detention (prisons, police cells, etc.) and on the visits to places of detention in the annual report of the Office of the Prosecutor General;
- Follow the CPT visit report recommendations and take steps to ensure that prosecutors in charge of inspecting prison establishments regularly visit detention areas and enter into direct contact with prisoners;
- Continue monitoring the human rights situation in places of detention as the basic form of contributing to Torture Prevention;
- Encourage a more active engagement of NGOs in monitoring of the places of detention through raising NGO capacities and fostering networking on regional and national level; and
- Actively engage in raising awareness about the UN Optional Protocol to Committee against Torture and lobby for accountability and transparency in all places of deprivation of liberty.

## **III MONTENEGRO**

### **3.1. General country background**

Montenegro is a parliamentary republic that declared its independence on 21 May 2006 from the former State Union of Serbia and Montenegro. After the collapse of SFR Yugoslavia, jointly with Serbia, Montenegro was in SR Yugoslavia, and afterwards in the State Union of Serbia and Montenegro.

Montenegro has borders with Croatia, Bosnia and Herzegovina, Serbia, Kosovo and Albania. According to the data from the last census, Montenegro has the population of 620,029. Out of this number, 278,865 are Montenegrins; 178,110 Serbians; 53,605 Bosniaks; 30,439 Albanians; 6,021 Croats; 6,251 Roma; 2,054 Egyptians and others. The capital of Montenegro is Podgorica, with 187,085 inhabitants. Other larger towns are: Niksic (72,824), Bijelo Polje (46,676) Bar (42,368), Berane (35,452), Pljevlja (31,060), Herceg Novi (30,992), while other towns have less than 30 thousand inhabitants.

Although the authorities have often pointed out that Montenegro did not participate in the war in the '90s, the local NGOs believe that the authorities of that period were responsible for many crimes against civilians and war prisoners on its territory, as well as on the territory of other former SFR Yugoslavia republics. Also, NGOs believe that the process of dealing with the past was not carried out and that many victims who suffered torture, inhuman treatment or abuse, lost their lives or property and even nowadays waiting for their cases to be heard, legal proceedings to take place, and justice to be served for themselves and their families.

### **3.2. Applicable legal framework – from international norms to domestic legislation**

#### **3.2.1. International treaties**

Montenegro has signed and ratified the following international conventions and treaties:

- International Convention on the Elimination of All Forms of Racial Discrimination, ratified<sup>16</sup> on 23 Oct 2006;
- International Covenant on Economic, Social and Cultural Rights, ratified on 23 Oct 2006;<sup>17</sup>
- International Covenant on Civil and Political Rights, ratified on 23 Oct 2006;
- Optional Protocol to the ICCPR, ratified on 23 Oct 2006;<sup>18</sup>
- Convention on the Elimination of All Forms of Discrimination against Women, ratified on 23 Oct 2006;

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16 The date of the succession after the independence of Montenegro is taken as the ratification date.

17 *ibidem*

18 *ibidem*

- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, ratified on 23 Oct 2006;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 23 Oct 2006;
- Optional Protocol to the CAT, ratified on 6 Mar 2009;
- Convention on the Rights of the Child, ratified on 23 Oct 2006;
- Optional Protocol to the CRC on the involvement of children in armed conflict, ratified on 2 May 2007;
- Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, ratified on 23 Oct 2006;
- Convention on the Rights of Persons with Disabilities, ratified on 2 Nov 2009;

### **3.2.2. Council of Europe Membership**

- Montenegro became the 47th Member State of the Council of Europe on 11 May 2007.
- Montenegro ratified the European Convention on Human Rights in 2004.

### **3.2.3. Death Penalty**

The Parliament of Montenegro amended the Criminal Code on 19 June 2002 and abolished the death penalty. During the Parliamentary debate, it was pointed out that the main reason for this abolition was the joining of then SR Yugoslavia to the Council of Europe.

### **3.2.4. Judiciary**

The Constitution is the ultimate legal act in the country. The courts are formed and are functioning according to the Constitution, laws and international agreements. The Constitution prohibits the establishment of extraordinary courts.

The hierarchical structure of courts is as follows:

- 1) Supreme Court of Montenegro
- 2) Appellate Court of Montenegro
- 3) Higher Court
- 4) Basic Court

The Constitutional Court of Montenegro is one of the courts with wide competences. This court examines the constitutionality of the laws adopted by the Parliament. The Constitutional Court can also review other regulations and by-laws. It also decides constitutionality and legality of regulations adopted by the executive power, public authorities and local self-governments. The court may revoke these regulations or certain provisions if it determines that they are unconstitutional or illegal. Also, the court implements a specific control of individual legal acts and protects human rights and fundamental freedoms in the proceedings initiated by the constitutional complaint. In this procedure,

the Constitutional Court may revoke any decision made by any Montenegrin court, if it is recognized that the act violates the constitutional right of the applicant. The protection provided by the Constitutional Court is the last instance before referring to the European Court of Human Rights.

### **3.2.5. Domestic legislation prohibiting torture**

#### **Constitution**

Article 28 of the Constitution states: “The dignity and security of any man shall be guaranteed. The inviolability of the physical and mental integrity of a man, and privacy and individual rights thereof shall be guaranteed. No person shall be subject to torture or inhumane or degrading treatment. No person shall be held as a slave or in a position of slavery.” Another provision in the Constitution regarding the issue of torture is paragraph 2 of Article 44: “A foreign national shall not be expelled from Montenegro to a place where, due to his race, religion, language or association with a nation, he/she is threatened with a death sentence, torture, inhuman degradation, persecution or serious violation of rights guaranteed by this Constitution.”

Apart from the mentioned Articles, torture or inhuman or degrading treatment are also indicated in the Articles 26, 27, 29, 30 and 31 of the Constitution.

#### **Criminal Code**

In the Criminal Code of Montenegro, torture is defined in Article 167:

(1) Anyone who inflicts severe pain or heavy suffering, whether bodily or mental, on a person in order to obtain from him or a third party a confession or other information, or in order to unlawfully punish or intimidate him, or to exert pressure over him or to intimidate or exert pressure over a third party, or does so for other reasons based on discrimination, shall be punished by a prison term from six months to five years.

(2) In cases when the offence under paragraph 1 above was committed by a public official while acting in his official capacity or when the offence was committed under his explicit or implied consent, or where a public official incited another person to commit the offence under paragraph 1 above, the public official shall be punished for the offence under paragraph 1 above by a prison term from one to eight years.

Apart from this Article, several others in the Criminal Code refer to the torture and ill-treatment and they are: Article 143, 144, 151, 152, 162, and 166.

### **3.3. National Human Rights Institution (NHRI), National Preventive Mechanism and other monitoring mechanisms**

#### **3.3.1. NHRI - Ombudsman**

The Human Rights Protector (Ombudsman) of Montenegro was established under Article 82 paragraph 14 of the Constitution. The Human Rights Defender is assigned by the President of the Republic after consultations with scientific and specialized institutions and the non-governmental organizations whose core activity deals with human rights and freedom issues. The procedure for the appointment of the Protector will commence no later than 60 days before the expiration of the term of mandate of the Protector. Article 25c of the Law on Protector of Human Rights states that the Ombudsman has a right to access every detention facility and every place where persons are deprived of their liberty, as well as the facility's files and documents.

The Law on Human Rights Protector also provides for a mechanism of examining the complaints to the Ombudsman (Articles 28-35). A complaint can be made within a year after the alleged violation took place. In exceptional cases, the Ombudsman can consider the complaint after the one-year deadline as well. When investigating a complaint, the Ombudsman will need to exhaust remedies available domestically, observe other information sources, inquire public officials etc. When the Protector finds that the violation of human rights and freedoms occurred, his/her opinion shall also contain a recommendation on what needs to be done to remedy the violation, as well as the deadline for the remedy.

The law also provides for the Ombudsman's annual public reports. The Protector may submit a special report to the Parliament, if he/she deems that it is necessary for the protection of the human rights and freedoms. The special reports shall also be available to the public.

#### **3.3.2. National Preventive Mechanism**

The NPM in Montenegro is a classical Ombudsman Plus system that is widely used in Europe and around the world. The Ombudsman Plus system has been rather weak in the contexts where the overall human rights situation and independence of the judiciary is questionable. However, in all the contexts where human rights are respected in a favorable manner, this system has shown good results and performance.

Montenegro ratified the Optional Protocol to the United Nations Convention against Torture (OPCAT) in March 2009 and designated its Ombudsman as National Preventive Mechanism (NPM) in August 2011, following the entry into force of the Law on Ombudsman. After the formation of the Advisory Body of Experts (set forth by the above-mentioned law as the organ assisting the Ombudsman in carrying out its activities as NPM), a Deputy Ombudsman was specifically appointed for the prevention of torture, and two legal advisors within the Ombudsman's office were assigned exclusively to NPM related tasks and activities.

The NPM has already conducted numerous visits to places of deprivation of liberty which have resulted in the publication of two thematic reports on police and psychiatric establishments. NPM staff from the Ombudsman's office, as well as members of the Advisory Body, were conducting an assessment of the Remand Prison at the time of the CPT's visit.

Article 25 of the Law on Human Rights Protector declares that the Protector shall be the National Preventive Mechanism for the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment (hereafter referred to as: the prevention of torture), in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishments. In order to perform certain duties for the prevention of torture that require a specialized knowledge, the Protector shall form a working body consisting of experts in the relevant fields. The act on Creation of the Advisory Body, referred to in paragraph 2 of this Article, shall determine the tasks and means of operation of that body.

Article 25a implies that the members of the body referred to in paragraph 2 of the Article 25 of this Law shall be nominated by the Protector based on the public call. The number, composition, criteria, manner of nomination of members of the body referred to in paragraph 1 of this Article shall be determined within the Rules of Procedure of the Protector. According to the Article 25b, the prevention of torture includes the following:

- visiting authorities, institutions or organizations in which persons deprived of their liberty and persons with a restricted movement are placed or could be placed, in order to increase the level of their protection from torture and other cruel, inhuman or degrading treatment or punishment;
- giving recommendations to the competent authorities, institutions and organizations to improve the treatment of persons deprived of their liberty and the conditions in which they are staying, or the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- giving opinions on laws and regulations for the protection and promotion of human rights and freedoms of persons deprived of their liberty and persons with a restricted movement;
- cooperation with the United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Subcommittee for the Prevention of Torture).

Persons deprived of their liberty, as prescribed by the provisions of this Law, are persons under any kind of retention, detention, imprisonment or placement under the supervision of an authority, who cannot abandon such place at their own will.

The CPT has noted the fact that the NPM functions are carried out by a separate unit within the Ombudsman's office, which has its own dedicated staff. With reference to paragraph 32 of the Guidelines on National Preventive Mechanisms adopted by the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), the Committee recommends that consideration be given to creating a specific budget head for the NPM's activities within the overall budget of the Ombudsman's Office. The CPT would also like to be informed of the budgetary means earmarked for the NPM's activities in 2013 and 2014. <sup>19</sup>

The Rulebook about the Internal Organization and Systematization of Professional Service

19 <http://www.cpt.coe.int/documents/mne/2014-16-inf-eng.pdf> page 9

defined the organization of the NPM, which is headed by the Deputy Human Rights Protector with the help of five Advisers. According to competences defined by the mentioned Law, the Protector issues a public call for election of members of the NPM. The NPM is recruited by the Protector and it is composed of professionals in the area of psychiatry and psychology, as well as lawyers and forensic doctors. The procedure of electing and appointing is stated in articles 15, 16, 17, 18 and 19. The Act on Establishing the NPM defines its duties and competences.

Aiming to improve its role as the NPM, the Protector defines an annual plan of visits to the organizations and institutions of deprivation of liberty, which is based on the previously adopted four-year plan.

» *Shortcomings*

Additional and adequate funding for the NPM should be provided.

A specific Law on the NPM does not exist in Montenegro, because the Protector is the NPM, thus competences of the Protector as the NPM are prescribed in the framework of Law on Protector of human rights and freedoms.

### **3.3.3. Other monitoring mechanisms**

- In accordance with the Law on Internal Affairs, the Control of Police is conducted by internal control and the Council for Civil Control of Police.<sup>20</sup>
- The prosecutor can also investigate in prisons and police premises according to the Criminal Procedure Code.
- The Ombudsman has the authority to enter all places where persons are deprived of their liberty (see Law of the Protector Article 25b).
- The High Court has jurisdiction to control the investigation of prisons according to the Criminal Code and the Criminal Procedure Code.

- Listed below are all the civil society monitoring groups for all the mentioned different institutions- NGO groups:

1. *Youth Initiative for Human Rights, local partners: Civic alliance, NVO 4life, LGBT Forum Progress*

2. *Human Rights Action, Juventas*<sup>21</sup>

## **3.4. Response - Cases of torture**

In many instances, the examinations of torture cases show that the torture by the law enforcement officials was motivated by: obtaining the crime-related information, solving

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20 Police and Human Rights: Civil Control of the work of Police in practice, [http://www.kontrolapolicije.me/index.php?option=com\\_content&view=article&id=5&Itemid=107&lang=sr](http://www.kontrolapolicije.me/index.php?option=com_content&view=article&id=5&Itemid=107&lang=sr) pages: 6-7

21 <http://www.hracion.org/?p=6945>

the crime or punishment for the non-obedience. A number of torture cases described<sup>22</sup> similar circumstances and similar approaches by the investigation. Torture cases happen both within closed institutions during apprehension and during the rallies and demonstration, which will be covered in this report.

### **3.5. Places of deprivation of liberty**

#### *Ministry of Justice* **ZIKS**

The Institution for Enforcement of Criminal Sanctions (ZIKS) is responsible for providing security to detainees and accused persons, the health protection, treatments, and reintegration of prisoners and the professional development of officers of the Institution and other duties important for the execution of criminal sanctions.

The structure of the Institution is defined according to six organizational units:

- Detention and rehabilitation center Podgorica (KPD Podgorica)
- Remand Prison Podgorica
- Facility for short-term prison sentences
- Bijelo Polje Prison
- Health care service
- Center for the education of staff.

Depending on the level of security, the type of treatment and reintegration programs, and the scope of limitation of freedom and rights of the accused person, the prison punishments are executed in premises of the closed, semi-open and open types, although the open one has not started to function yet.

Current capacities in ZIKS are 1350 places. Out of this number: KPD Podgorica – 655, Remand Prison Podgorica – 350, Facility for short-term prison sentence – 185, and Bijelo Polje Prison – 160 places.

#### *Ministry of Interior:*

– Centers and Security Departments in Podgorica, Bar, Budva, Berane, Bijelo Polje, Niksic, Pljevlja, Herceg Novi, Andrijevisa, Danilovgrad, Ulcinj, Kotor, Tivat, Plav, Pluzine, Rozaje, Zabljak, Kolasin, Mojkovac, Savnik, and Cetinje; water border port crossings at Port Bar, Kotor, Tivat-Porto Montenegro, and Zelenika; air border crossings at airports in Podgorica and Tivat; land crossings and the Asylum Center in Spuz. The Police Directorate did not answer our request for information about the specific number of places of detention. According to our information, the Police Directorate has at least 35 rooms for deprivation of liberty.

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22 <http://www.gamn.org/images/docs/en/HumanRightsInMontenegro.pdf> pages 40- 52

*Ministry of labor and social welfare:*

The Asylum Center in Spuz and two alternative accommodations for asylum seekers in Podgorica, Public Institution „Komanski most“ in Podgorica, the Center for Children and Youth “Ljubovic“ Podgorica, Children’s Institution „Mladost“ in Bijela, health care centers for the elderly in Bijelo Polje and Risan.

*Ministry of health:*

Special hospital – Dobrota, Psychiatry Departments in Niksic and Podgorica.

### **3.6. Areas of concern**

#### **Main institutions where torture occurs more frequently**

In Montenegro, torture is not as widespread as it was in the past. A few years ago, torture occurred more frequently in the following institutions:

1. ZIKS (Institute for the Execution of Criminal Sanctions)- the Montenegro prison
2. Institute “Komanski Most”- a public institution that provides housing for persons with mental disabilities.

#### **Institutions that are overcrowded beyond their capacities**

Capacity(C)/Actual number of prisoners (A)

KPD Podgorica – C655/ A665

#### **Special Hospital for Psychiatry**

The Court Division has capacities for 20 patients. All the capacities are full, plus there is another 50 patients in the hospital with the imposed judicial treatment measure. However, all of them are placed in other divisions. The total capacity of the hospital is 240 patients, but it has been exceeded.

#### **Police actions during the rallies and demonstrations and the preliminary arrest stage**

The YIHR registered 25 complaints of citizens during the protests in October 2015. In 9 cases, the Council for Civilian Control of Police found excess number of police officers and a violation of citizens’ rights. Other cases are in progress before the State Prosecutor’s Office. During the protests, citizens were exposed to torture and excessive use of force by the police. The evidence for this is presented in the report that the CA team has, complete with documentation and testimonies. Competent institutions have not responded professionally to the complaints of citizens, non-governmental organizations, and the wider public about the treatment of citizens during the protest. Only 2 police officers have been identified and held accountable for the violent acts during that night.

## **Access to health care by people deprived of liberty**

Persons deprived of their liberty have the right to exercise their health care protection in the prison or at the police. However, the largest number of complaints that the NGOs received were related to the quality of health care. Capacities are often underutilized, and less doctors work than it was envisaged by the reform. CPT indicated this and recommended increasing the number of medical workers.

Very often the convicts have to wait for basic treatment for several months as it is often not available at the prisons.

The Ombudsman discovered a case where the person who was HIV positive was in a solitary confinement for 20 days, with no access to any health care or medicine.

## **Main concerns from the reports of UN SPT and Council of Europe CPT**

### **Torture and other forms of ill-treatment**

„14. As it had been the case during previous visits, the delegation which carried out the 2013 visit to Montenegro received many allegations of deliberate physical ill-treatment of persons deprived of their liberty by the police. The great majority of the allegations referred to ill-treatment inflicted at the time of questioning with a view to extracting a confession or obtaining information. The ill-treatment alleged was in some cases of such severity that it could be considered to amount to torture. “(CPT report 2013)

### **Conditions of detention**

„34. The conditions of detention in the police cells visited by the CPT’s delegation were distinctly better than during the 2008 visit. In particular, renovation work at Bar and Danilovgrad Police Stations had addressed deficiencies highlighted by the CPT in its report on that visit; cells possessed a means of rest with mattresses and blankets, a functioning ventilation system and a call bell. However, a number of shortcomings remained. At Kotor Police Station, a double occupancy cell measured only some 6 m<sup>2</sup> and had no access to natural light; at Herceg Novi Police Station, cells were cold and had no access to natural light and only weak artificial lighting; at Ulcinj Police Station, the artificial lighting in all cells was not working, and there was only minimal access to natural light and poor ventilation in the basement cells. Further, in none of the police establishments visited were criminal suspects offered outdoor exercise. The CPT takes note of the measures taken by the Montenegrin authorities to improve detention conditions in police stations following the 2008 visit. The Committee recommends that steps be taken to remedy the deficiencies in the police stations referred to above; as for the 6 m<sup>2</sup> cell at Kotor Police Station, it should only be used for single occupancy. Further, the Committee recommends that the Montenegrin authorities take measures to ensure that all persons held in police custody for 24 hours or more are offered outdoor exercise. “(CPT report 2013)

### **3.7. Recommendations**

- The judicial authorities should provide a sufficient number of trainings for judges and prosecutors, particularly in the area of human rights violations such as ill-treatment and torture. This is especially because so far, the authorities have not provided the war crime victims the right to the truth, justice, compensation and non-repetition for the war crimes that occurred during the '90s.
- The State Prosecutor's Office should include the Istanbul Protocol in the training program for prosecutors.
- The State Prosecutor Offices should implement urgent independent and effective investigations on all the allegations of ill-treatment and torture and inhuman treatment or punishment. Officials should not be prosecuted differently than the citizens.
- The State should provide the Ombudsman Institution with enough resources (budget and space) to perform the role in accordance with its competencies, the NPM in particular.
- The Government should ensure a sufficient number of employees in all the institutions used to accommodate persons deprived of liberty. Primarily, it is necessary to employ a larger professional and medical staff.
- It is necessary to ensure the respect of the basic human rights during detention. The authorities of the Ministry of the Interior and the Police Administration should 'send messages' on a regular basis that the ill-treatment and inhuman treatment of citizens by officials will not be tolerated. The Police Administration must cooperate with all state institutions and bodies such as the Basic State Prosecutor's Office and the Council for Civilian Control of Police Work, and to regularly communicate the names of police officers who have acted unlawfully and have violated the human rights.
- The Police Administration should avoid the practice of returning police officers convicted of torture to working places that involve direct communication and work with the citizens deprived of their liberty.
- The Police Administration should provide video surveillance and to carry out adaptation of all the places of detention of persons deprived of liberty.
- The Police Administration should continue with trainings on the use of coercive means. All officers must undergo these trainings.
- It is important to devote more attention to education of medical workers about reporting the cases of torture, because previous practice shows that injuries were not appropriately registered or findings/analysis was not quite clear.
- It is necessary to reduce the overcrowding in prisons and other places where citizens are deprived of their liberty. The courts should impose alternative sanctions more, and judges and prosecutors should have more training in this area in order to initiate more decisions aimed at serving alternative sanctions.

- The Ministry of Justice should continue with programs that promote alternative sanctions. It is necessary to expand the circle of institutions in which the work in public interest can be realized. Accordingly, it is necessary to move towards the modification of legislative solution as well to extend the work in public interest beyond the legal entities involved in the activity of public interest (humanitarian, social, communal, health, agricultural) to non-governmental organizations, as they are non-profit by nature.
- As a priority, the Government should find a solution to the problem of overcrowding in the Special Psychiatric Hospital in the town of Kotor. It is necessary that the state develops the system of social care, and to increase the availability of adequate alternatives to psychiatric hospitals. Also, it is necessary to ensure that the persons who do not require further treatment in the Special Hospital for Psychiatry receive adequate protection. We recall that the Committee on Economic, Social and Cultural Rights made the same recommendations to Montenegro in 2014. Such a situation would increase the number of patients who would take part in the therapeutic and rehabilitation activities that are tailored to their needs and it would be possible to expand the range of such activities.
- The state institutions should encourage and initiate the involvement of NGOs in monitoring of the places of detention of persons deprived of liberty.
- The NGOs should continue to conduct a regular monitoring of places of detention of persons deprived of liberty and to inform the institutions and the public on the findings. The NGOs should cooperate with the state institutions and organize educational programs for civil servants.

## **IV SERBIA**

### **4.1. General country background**

Serbia is a parliamentary constitutional republic. The executive power is exercised by the Government with the Prime Minister as the head. The Prime Minister is chosen by the National Assembly on the proposal of the President, who names the designate after consultations with all parliamentary leaders. The President is elected based on popular vote, but has little governing power and holds primarily a ceremonial position. The President's term is five years long and he can be elected for two terms at the most. Members of the government are nominated by the Prime Minister and confirmed by the National Assembly. The governing power is vested in the Prime Minister, Deputy Prime Ministers and other ministers. The Prime Minister is responsible for presenting his agenda to the National Assembly, as well as proposing the ministers for the cabinet posts in his government. The government is considered elected if it has won the majority of the vote of all representatives in the National Assembly.

Serbia's population is 7,186,862.

Based on the last census (from 2011), 83% of the population are Serbs, while other nationalities are Hungarians (3.5%), Roma (2%), Bosniaks (2%) and 9% of all others (excluding Kosovo).

The capital of Serbia is Belgrade, which is also its biggest city with population of 1,659,440 (wider area population). Other major cities are Novi Sad (341,625), Nis (260,237), Kragujevac (179,417), Subotica (141,554), Pancevo (123,414), Zrenjanin (123,362), Cacak (115,337), Kraljevo (125,488), Novi Pazar (100,140), Leskovac (144,206), Smederevo (108,209), Vranje (83,524), Uzice (78,040), Valjevo (90,312), Krusevac (128,752), Sabac (115,884), Pozarevac (75,334), Sombor (85,903), Zajecar (59,461), Sremska Mitrovica (79,940), Jagodina (71,852), and Loznica (79,327).

Serbia has established diplomatic relations with all of its neighboring countries (Hungary, Romania, Bulgaria, Macedonia, Montenegro, Croatia, and Bosnia and Herzegovina). With Kosovo (which declared independence in 2008), the situation is somewhat specific – Serbia doesn't have a diplomatic residence there, but the liaison officer in Pristina. Also, under facilitation from the European Union, Serbia and Kosovo are having negotiations in Brussels in order to normalize their relations.

In 1989, Slobodan Milosevic rose to power in Serbia. Milosevic promised to reduce the power of the two autonomous provinces of Serbia – Kosovo and Vojvodina – where his allies subsequently overtook power during the Anti-bureaucratic Revolution. This ignited tensions with the communist leadership of the other republics, and awoke nationalism across the country of Yugoslavia, which eventually resulted in its breakup. Slovenia, Croatia, Bosnia and Herzegovina and Macedonia declared independence, while Serbia and Montenegro remained together as the Federal Republic of Yugoslavia (FRY).

Fueled by ethnic tensions, the Yugoslav Wars erupted in 1991, with the most severe conflicts taking place in Croatia and Bosnia, where the ethnic Serb populations opposed the independence from Yugoslavia. The FRY remained outside the conflicts, but provided logistic, military and financial support to Serb forces in Croatia and Bosnia and Herzegovina.

In response, the UN imposed sanctions against the Federal Republic of Yugoslavia in May 1992, which led to a political isolation and a collapse of the economy. Multiparty democracy was introduced in Serbia in 1990, officially dismantling the one-party system.

The critics of Milosevic claimed that the government continued to be authoritarian despite constitutional changes, as Milosevic maintained a strong political influence over the state media and the security apparatus. When the ruling Socialist Party of Serbia refused to accept its defeat in the municipal elections of 1996, the citizens engaged in large protests against the government. Between 1998 and 1999, peace was broken again, when the situation in Kosovo was worsened by constant clashes between the Yugoslav security forces and the Albanian guerrilla Kosovo Liberation Army. The confrontations led to the Kosovo War, which ended in the withdrawal of the Serbian forces from Kosovo and the establishment of UN administration of the province.

After the presidential elections in September 2000, the opposition parties accused Milosevic of an electoral fraud. A campaign of civil resistance followed, led by the Democratic Opposition of Serbia (DOS), a broad coalition of anti-Milosevic parties. This culminated on 5 October, when half a million people from all over the country congregated in Belgrade, compelling Milosevic to concede defeat. The fall of Milosevic ended Yugoslavia's international isolation. Milosevic was sent to the International Criminal Tribunal for the former Yugoslavia. The DOS announced that FR Yugoslavia would seek to join the European Union. In 2003, the Federal Republic of Yugoslavia was renamed Serbia and Montenegro; the EU opened negotiations with the country for the Stabilization and Association Agreement.

Serbia's political climate remained tense and in 2003, its Prime Minister Zoran Djindjic was assassinated as the result of a plot originating from the circles of organized crime and former security officials.

On 21 May 2006, Montenegro held a referendum to determine whether to end its union with Serbia. The results showed that 55.4% of voters were in favor of the independence, which was just above the 55% required by the referendum. On 5 June 2006, the National Assembly of Serbia declared Serbia to be the legal successor to the former State Union. The province of Kosovo unilaterally declared independence from Serbia on 17 February 2008. Serbia immediately condemned the declaration and continues to deny any statehood to Kosovo. The declaration has sparked varied responses from the international community—some welcomed it, while the others condemned the unilateral move. Status neutral talks between Serbia and Kosovo are held in Brussels, mediated by the EU.

In April 2008, Serbia was invited to join the Intensified Dialogue program with NATO, despite the diplomatic rift with the alliance over Kosovo. Serbia officially applied for the EU membership on 22 December 2009, and received candidate status on 1 March 2012, following a delay in December 2011. After a positive recommendation of the European Commission and the European Council in June 2013, negotiations to join the EU commenced in January 2014. In July 2016, the EU opened chapters 23 and 24 within the negotiation process with Serbia.

## **4.2. Applicable legal framework from international norms to domestic legislation**

### **4.2.1. International treaties**

The Federal Republic of Yugoslavia deposited a notification of succession of the former SFRY on 26 April 2001, continuing its membership in the international treaties, and was again accepted in the United Nations. The Republic of Serbia, as the legal successor of the State Union of Serbia and Montenegro, did the same pursuant to a Decision of the National Assembly of the Republic of Serbia of 5 June 2006.

All major universal human rights treaties are binding on Serbia, including: the International Covenant on Civil and Political Rights and its two Protocols, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination against Women and its Protocol, the Convention on the Rights of the Child and its two Protocols (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography), the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Protocol, the Convention on the Rights of Persons with Disabilities and its Protocol, and the Convention for the Protection of All Persons from Enforced Disappearance.

The nationals of Serbia are entitled to file individual complaints to all of the UN Committees charged with monitoring the implementation of human rights conventions with the exception of the Committee on Economic, Social and Cultural Rights, given that Serbia has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Serbia has also failed to accept the right to the submission of collective complaints to the European Committee of Social Rights under the Revised European Social Charter. Moreover, the citizens of Serbia are entitled to file applications with the European Court of Human Rights. Serbia ratified many regional instruments. Serbia and Montenegro ratified the ECHR and the 14 Protocols thereto on 26 December 2003. Serbia has not had any valid reservations to the ECHR since 2011.

Serbia is bound by the following international conventions prohibiting the capital punishment (dates of ratification are given in parentheses): Second Optional Protocol to the International Covenant on Civil and Political Rights (6 September 2001) and Protocols No. 6 and No. 13 to the European Convention on Human Rights (3 March 2004). According to Art. 24 of the Constitution of Serbia (2006): „Human life is inviolable. There shall be no death penalty in the Republic of Serbia“.

Serbia is bound by the following treaties:

- International Convention on the Elimination of All Forms of Racial Discrimination, ratified on 12 March 2001;
- International Covenant on Economic, Social and Cultural Rights, ratified on 12 March 2001;
- International Covenant on Civil and Political Rights, ratified on 12 March 2001;
- Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty, ratified on 06 September 2001;

- Convention on the Elimination of All Forms of Discrimination against Women, ratified on 12 March 2001;
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted on 31 July 2003;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 12 March 2001;
- Optional Protocol to the CAT, Serbia and Montenegro ratified in December 2005;
- Convention on the Rights of the Child, ratified on 12 March 2001;
- Optional Protocol to the CRC on the involvement of children in armed conflicts, ratified on 31 January 2003;
- Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, ratified on 10 October 2002;
- Convention on the Rights of Persons with Disabilities, ratified on 31 July 2009;

#### **4.2.2. Council of Europe Membership**

After the democratic changes in the autumn of 2000, the Federal Republic of Yugoslavia applied for the Council of Europe membership. In its Resolution 15 on the Federal Republic of Yugoslavia from 22 November 2000, the Committee of Ministers accepted the request and invited the Parliamentary Assembly to give its opinion on this application in accordance with the Statutory Resolution (51) 30.

Due to the need to redefine the relations between the two federal entities, Serbia and Montenegro signed an agreement on 14 March 2002 which led to the adoption of the Constitutional Charter in February 2003, constituting the State Union Serbia and Montenegro, as a successor of FRY.

During the accession procedure, the PA thoroughly examined the situation in the country and closely followed developments. An ad hoc committee observed the elections to the national assemblies of Serbia on 23 December 2000 and of Montenegro in April 2001. The Congress of Local and Regional Authorities of Europe (CLRAE) also observed the elections in the municipalities.

Serbia became the 45th Member State of the Council of Europe on 3 March 2003 and in the same year it also ratified the European Convention on Human Rights.

#### **4.2.3. Death Penalty**

On 26 February 2002, the Serbian Parliament adopted amendments abolishing the death penalty from the Criminal Code. The last execution, by shooting, took place on 14 February 1992, and the last death sentences were pronounced in 2001.

#### **4.2.4. Judiciary**

The National Assembly of Serbia has adopted the National Strategy for a Judicial Reform for the period 2013-2018.

Some of the most important guidelines for the activity of the Ministry of Justice regarding the reform of the justice system are: preparation, approval and implementation of legislative and institutional measures that aim at improving and fulfilling the qualitative extent of the independence and effectiveness of the judicial system; alignment of the Serbian legislation with that of the EU; alignment with present-day standards of civil and criminal legislation; as well as the alignment of organization and functioning of free judicial professions.

The aim of the Strategy is: "Improving the quality and efficiency of justice; strengthening the independence and accountability of the judiciary in order to strengthen the rule of law, democracy, and legal certainty; bringing justice closer to citizens; and restoring the trust in the judicial system".

The reform of the judicial system in the Republic of Serbia is based on independence, impartiality and quality of justice, professionalism, accountability and efficiency. Those principles provide a framework for the establishment, development and organization of judicial institutions in order to create a judicial system that can fully protect the rights of all citizens, with a permanent goal of improving the concrete application of the system at every stage of the development of the judiciary and law practice.

The results achieved within the previously implemented reforms, set out in the above documents, and the problems of the judiciary which should be urgently solved, were found to be:

- Reintegration in the judicial system of the judges and public prosecutors who were returned to office on the basis of decisions of the Constitutional Court, and the review of the judicial network;
- Addressing the backlog of cases;
- Protection of the Right to a Trial within reasonable time;
- Improving the status of the High Judicial Council and the State Prosecutorial Council, and the normative regulation of responsibilities of these two bodies;
- Harmonization of the court practice; and
- The establishment of a uniform system of e-Justice.

According to the Constitution of the Republic of Serbia, the judicial system consists of general courts and courts of special jurisdiction.

The Act states that the courts of general jurisdiction are basic courts, higher courts, courts of appeal and the Cassation Court.

– Basic Court is established for the territory of one city, or one or more municipalities. According to the units and areas of courts and public prosecutor's offices in the territory of the Republic of Serbia, there are 34 basic courts. With the exception of the First Basic Court and the Basic Court in Bor, all courts have from two to ten judicial units outside its original unit in which the judge and other court actions are taken.

– Higher Courts are established for the area of one or more basic courts on the basis of the immediately higher court when prescribed by law (Article 14. paragraph 1 and Article 15 paragraph 3 of Law on Organization of Courts). In Serbia there are 26 higher courts.

- Court of Appeal is established for the territory of several high courts and is directly above the higher and basic Court (Article 14. Paragraph 3 and Article 2, paragraph 15 of Law on Organization of Courts). There are 4 courts of appeal, based in Belgrade, Kragujevac, Nis and Novi Sad.
  - The Supreme Court of Cassation is the highest Court of the republic and the immediate superior to the higher court of appeal. Specialized courts are the commercial courts, the Commercial Appellate Court, misdemeanor courts, the Higher Misdemeanor Court and the Administrative Court.
  - A Commercial Court is established for the territory of one or more cities, or more municipalities (Article 2 paragraph 14. Law on Organization of Courts). There are 16 commercial courts.
  - Economic Appellate Court is established for the territory of the Republic of Serbia. Immediate superior to the Economic Court (Article 13, paragraph 1 and Article 15 paragraph 2 of Act).
  - Misdemeanor Court is established for the territory of the city, or one or more municipalities. A misdemeanor court may have departments outside the seat. In the Republic of Serbia there are 45 misdemeanor courts.
  - Higher Misdemeanor Court is established for the territory of the Republic of Serbia, based in Belgrade and with departments in Kragujevac, Nis and Novi Sad.
  - Administrative Court is established for the territory of the Republic of Serbia, based in Belgrade and with departments in Kragujevac, Nis and Novi Sad. (Article 13, paragraph 1 of the Administrative Disputes Act and Article 8).
- The Supreme Court of Cassation is the immediate superior of the Commercial Appellate Court, Higher Misdemeanor Court and the Administrative Court (Article 15.stav1 ZUS).

#### **4.2.5. Domestic legislation on prohibiting torture**

##### **Constitution**

The current Constitution of the Republic of Serbia was adopted on 8 November 2006, after a referendum. The adoption of a new constitution became necessary in 2006 when Serbia became independent after Montenegro's secession and the dissolution of Serbia and Montenegro. The Constitution contains a preamble, 206 articles, 11 parts, and no amendments.

Part two of the Constitution is dedicated to human rights and freedoms. There is no death penalty in Serbia (since 2002). Also, the Constitution guarantees that no one shall be subjected to torture, inhuman or degrading treatment or punishment, or to medical or scientific experiments without their free consent.

*The right to freedom and security:* Everyone has the right to liberty and security. Deprivation of liberty is allowed only for reasons and in a procedure stipulated by law. ... Any sentence which includes deprivation of liberty may be imposed only by the court.

*Treatment of persons deprived of liberty:* Persons deprived of liberty shall be treated with humanity and respect for the dignity of his/her personality. Article 25 of the Constitution clearly states that it is forbidden to solicit any violence against a person deprived of liberty.

Physical and mental integrity is inviolable. Nobody may be subjected to torture, inhuman or degrading treatment or punishment, or to medical and other experiments without their free consent.

### **Criminal code**

The new Criminal Code was adopted in 2005. Since then it has been amended with laws no. 85, no. 88 and no. 107 in 2005; law no. 72 and no. 111 in 2009; law no. 121 in 2012; law no. 104 in 2013; and law no. 108 in 2014.

There are a few important Articles and Chapters regarding the execution of criminal sanctions and the human rights conditions in prisons: Article 136 –Extortion of confessions; Article 137 –Ill- treatment and torture;

*Criminal Code 2005 (Official Gazette No. 85,2005; No. 88, 2005; No. 107, 2005; No. 72,2009; No.111,2009; No. 121,2012; No. 104,2013; No. 108, 2014)*

– No Criminal Offence or Punishment without Law (Article 1):

– Ill-treatment and Torture (Article 137):

(1) Whoever ill-treats another or treats a person in a humiliating and degrading manner, shall be punished with a fine or imprisonment for up to one year.

(2) Whoever causes anguish to another with the aim to obtain from him or another person information or a confession or to intimidate him or a third party or to exert pressure on such persons, or if done from motives based on any form of discrimination, shall be punished with imprisonment from six months to five years.

(3) If the offence specified in paragraphs 1 and 2 of this Article is committed by an official in discharge of duty, such a person shall be punished for the offence in paragraph 1 by imprisonment from three months to three years, and for the offence specified in paragraph 2 of this Article by imprisonment of one to eight years.

– *The Criminal Procedure Code (Official Gazette of RS, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014):*

The legal framework established by the new Criminal Procedure Code, which came into force on 1 October 2013, is less favorable than the previous one when it comes to the prosecution of perpetrators of torture and ill-treatment. Namely, the new Code envisages summary proceedings, i.e. excludes mandatory investigations, for crimes warranting up to eight years imprisonment, such as torture and ill-treatment and the simple form of the crime of extortion of statements. Therefore, prosecutors are under the obligation to conduct investigations only into aggravated forms of the crime of extortion of statements, whereas they can undertake individual investigation actions in the other cases of torture and ill-treatment at their own initiative or on the order of the court.

– *Law on the Enforcement of Penal Sanctions (LEPS, 2005, 2009) (Official Gazette of the RS, Nos. 85/2005 and 72/2009):*

The domain of the enforcement of criminal sanctions in the Republic of Serbia is normatively regulated by: the Law on the Enforcement of Penal Sanctions (LEPS, 2005, 2009) adopted in 2005 and amended in 2009; the Law on the Execution of the Prison Sentence for the Criminal Offences of Organized Crime (LEPSCOC, 2009) adopted in 2009; the Law on

Juvenile Criminal Offenders and Criminal Protection of Minors (LJCOCPM, 2005) adopted in 2005; the Decree on the Establishment of Institutions for the Enforcement of Institutional Sanctions in the Republic of Serbia; and the special House Rules for maximum-security and closed prisons, open prisons, women's prisons, district prisons and detention facilities and other relevant sub-law regulation.

### **4.3. National Human Rights Institution, National Preventive Mechanism and other monitoring mechanisms**

#### **4.3.1. National Human Rights Institution - Ombudsman**

The Law on the Protector of Citizens ("Official Gazette of RS", Nos. 79/2005 and 54/2007) states that the Protector of Citizens is an independent and autonomous state body which safeguards and looks after the promotion of citizens' rights and which controls the legality and regularity of the work performed by the bodies of government administration, the body in charge of the legal protection of the property rights and interests of the Republic of Serbia, as well as of other bodies and organizations, enterprises and institutions entrusted with the exercise of public powers. In performing his duties, the Protector of Citizens acts within the limits of the Constitution, the law, other regulations and bylaws, as well as the ratified international treaties and the generally accepted rules of the international law. Before filing the complaint, the applicant is required to make an attempt to protect their rights via appropriate legal proceedings.

The Ombudsman operates independently and no one has the right to influence its work and actions. The Ombudsman is elected by the National Assembly of the Republic of Serbia for a five year period and it is accountable for its work to the Parliament.

The Ombudsman became part of the legal order of the Republic of Serbia in 2005, when Parliament enacted the Law on the Ombudsman. Selection and powers of the Ombudsman are governed by the Constitution of the Republic of Serbia from 2006. The first Ombudsman Sasa Jankovic took office on 23 July 2007, taking an oath before the deputies of the National Assembly. The Ombudsman has four deputies who are elected by the National Assembly, which help the Ombudsman in the performance of duties.

The Expert Service of the Ombudsman, headed by the Secretary General, deals with complaints and submissions, obtains documents and determines other data necessary for assessing the merits of the complaint. It also does the legal, financial, office and other work necessary to perform the duties of the Ombudsman. The Expert Service of the Ombudsman began its work on 24 December 2007 at a temporary address in New Belgrade at Milutina Milankovića no. 106. From 4 May 2010, the new address of the Ombudsman is Deligradska no. 16, Belgrade.

– *Annual report of the Protector of Citizens for 2014*<sup>23</sup>

– *Annual report of the Protector of Citizens for 2015*<sup>24</sup>

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23 <http://bit.ly/1RUuuvQ> (English version);

24 <http://bit.ly/23hudxw> (only available in Serbian);

### **Provincial Ombudsman**

The Provincial Ombudsman is an independent and autonomous body of the Autonomous Province of Vojvodina, which protects the rights of citizens and supervises the work of the provincial administrative bodies, public enterprises, and institutions that exercise administrative and public powers, according to the decisions and other legal acts of the AP of Vojvodina.

Based on the new Provincial Assembly decision on the Provincial Ombudsman, the Provincial Ombudsman has four deputies that are elected for the fields of minority rights, children's rights and gender equality.

The decision on the establishment of the institution of Provincial Ombudsman was passed in December 2002. The first Vojvodina ombudsman was elected on 24 September 2003, and began working in January 2004. The seat of the institution is in Novi Sad.

– *The Annual report of the Provincial Ombudsman for 2015<sup>25</sup> gives us data on its work and competences.*

### **4.3.2. National Preventive Mechanism in Serbia**

The Republic of Serbia signed the OPCAT on 25 September 2003; it passed the Law on Ratification on 1 December 2005; and became a State Party of the OPCAT on 26 September 2006.

Under the Law amending the Law on the Ratification of the Optional Protocol, adopted on 28 July 2011 at the sitting of the Republic of Serbia National Assembly, the Protector of Citizens was designated as the authority performing the duties of the NPM.

In order to achieve statutory cooperation in the performance of the national mechanism for the prevention of torture, the Ombudsman with the Provincial Ombudsman of the Autonomous Province of Vojvodina concluded the Memorandum of Understanding.

The model of the NPM in the Republic of Serbia is defined by the relevant law. It stipulates that the Protector of Citizens shall carry out the duties of the NPM in collaboration with the Ombudsmen of the autonomous provinces and the associations whose statute intended goal is the promotion and protection of the human rights and freedoms.

The Law stipulates that the Protector of Citizens perform the function of the NPM for a number of reasons.

Namely, the mandate of the Protector of Citizens under the Law on the Protector of Citizens covers the competences and powers of the NPM stipulated by the OPCAT, including visits to the institutions at which PDLs are kept, interviews with them, access to data, making recommendations to the competent authorities, informing the general public about the presence of torture and promoting the status of PDLs.

Furthermore, it was observed that the Protector of Citizens had been pursuing intensive preventive activities as its team of experts, i.e. the "Prevention Mechanism of the Protector of Citizens", kept paying visits over a period of two (2) years to police stations, detention units, prisons, stationary-type social welfare institutions, mental institutions, shelters for asylum-seekers, etc.

In addition to the above, a decisive reason was also the fact that the Protector of Citizens has been recognized as the body acting on the basis of the Paris Principles, which is why

25 <http://bit.ly/1RUJbin>(only available in Serbian)

in April 2010 it was accredited as a National Human Rights Institution (NHRI) within the system of the United Nations and given status “A”.

The reason for stipulating cooperation between the Protector of Citizens and the Ombudsmen of the autonomous provinces and associations in performing the NPM duties is that the provincial Ombudsman of the Autonomous Province of Vojvodina and numerous associations of citizens have, for many years now, been extremely active in protecting the rights of PDLs and in preventing torture. Also, they have the know-how in monitoring the institutions where PDLs are held.

Currently in charge of the NPM is the deputy of the Protector of Citizens Milos Jankovic. The national mechanism for the prevention of torture conducts visits to institutions where persons are deprived of liberty (prisons, juvenile and social institutions, health facilities, police stations, asylums, etc.).

The national mechanism for the prevention of torture has unrestricted, unannounced and anytime access to all places where there are or may be persons deprived of liberty; it has the right to interview in private all persons deprived of their liberty and all the officials who may have information relevant to the treatment of persons deprived of liberty; it has access to all documentation relating to this person; it has a right to make recommendations to the competent authorities in order to improve the handling of persons deprived of their freedom and improving the conditions in which they reside, as well as the right to submit proposals and provide opinions with respect to existing or proposed legal acts.

The NPM determines the primary objectives and has a cooperative dialogue with the state authorities; it cooperates with various actors of the civil sector (NGOs, academics, trade unions ...), but also with the victims and former prisoners.

NPM is obliged to submit reports to the authorities about the visits to institutions, with recommendations for dealing with the shortcomings. The annual reports are submitted to the Subcommittee on Prevention of Torture. All the reports of the NPM are open to public:

- News and reports of NPM from all visits<sup>26</sup>
- NPM recommendations<sup>27</sup>
- Annual reports<sup>28</sup>
- Annual report for 2014<sup>29</sup>

» *Shortcomings*

Neither the capacity of bodies nor the resources available to them are such as to enable them to have a detailed insight into the problems that exist in each country and to allow them enough communication with the state authorities. This prevents the body to reach comprehensive and reliable information on the treatment of persons deprived of their liberty in a particular country.

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26 [http://www.npm.ils.rs/index.php?option=com\\_content&view=category&layout=blog&id=22&Itemid=13](http://www.npm.ils.rs/index.php?option=com_content&view=category&layout=blog&id=22&Itemid=13)

27 [http://www.npm.ils.rs/index.php?option=com\\_content&view=category&layout=blog&id=27&Itemid=18](http://www.npm.ils.rs/index.php?option=com_content&view=category&layout=blog&id=27&Itemid=18)

28 [http://www.npm.ils.rs/index.php?option=com\\_content&view=category&layout=blog&id=31&Itemid=22](http://www.npm.ils.rs/index.php?option=com_content&view=category&layout=blog&id=31&Itemid=22)

29 [http://www.npm.ils.rs/attachments/135\\_IZV%20NPM%202014%20engl.pdf](http://www.npm.ils.rs/attachments/135_IZV%20NPM%202014%20engl.pdf)(English version);

### **4.3.3. Other monitoring mechanisms**

#### **Other institutions within the government that oversee the places of detention**

– The enforcement judge: based on the Law on Execution of Criminal Sanctions, protects the rights of prisoners, convicts, persons to whom the security measure of compulsory psychiatric treatment and confinement in a medical institution is imposed, compulsory treatment of drug addicts or alcoholics when the compulsory treatment is carried out in the institute; oversees the legality of the enforcement of criminal sanctions and ensures equality of these persons before the law. The judge also: 1) Protects of the detainees' right to appeal; requests for a judicial protection of convicted persons, persons to whom the measure of compulsory psychiatric treatment and confinement in a medical institution is imposed, compulsory treatment of drug addicts or alcoholics when compulsory treatment is carried out in the institute; 2) protects of the rights of convicts deciding on an appeal against the prison governor or the Board of Directors, in the cases stipulated by law; 3) other cases provided by law.

– Department for the Protection and Exercise of Rights within the Directorate for Execution of Criminal Sanctions: Performs tasks related to the pardon, amnesty, transfer and subsequent deployment of persons deprived of their liberty, and to the changes of the assignment acts; ends the prison sentence and works outside the institution; handles matters related to petitions and complaints of persons deprived of liberty, carries out activities related to the determination of appeals to decisions of the Board of Directors and the decisions of the manager. Performs tasks and prepares acts related to the deployment of prisoners; prepares solutions for an early release of prisoners and carries out all activities which relate to administrative and legal protection of prisoners. Records data on the use of force, self-mutilation, disciplinary sanctions and deaths of prisoners from all prisons.

#### **Civil society monitoring groups for all the different mentioned institutions**

In total, nine non-governmental organizations were selected to be a part of the National Preventive Mechanism organized by the Ombudsman office, with specific focus on areas where torture may occur<sup>30</sup>. They are participating in the field visits, both announced and unannounced, writing reports at the end of these visits and reacting to each case that is addressed to them.

Here we have listed the organizations that were interviewed during the writing of this report.

- Youth Initiative for Human Rights (yih.org)
- Lawyers Committee for Human Rights - YUCOM (yucom.org.rs)
- Helsinki Committee for Human Rights (helsinki.org.rs)
- Belgrade Center for Human Rights (bgcenter.org.rs)

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30 [http://www.npm.ils.rs/index.php?option=com\\_content&view=category&layout=blog&id=26&Itemid=17](http://www.npm.ils.rs/index.php?option=com_content&view=category&layout=blog&id=26&Itemid=17)  
NB This webpage is announcing the signing of the agreements with different NGOs and this procedure of signing was already conducted in 2015.

#### **4.4. Response – Cases of torture**

In Article 3, the prohibition of torture (European Convention on Human Rights), eight judgments were given by the European Court of Human Rights. The violations were found in five of these cases:

- Habimi and others v. Serbia, judgment of 3 June 2014;
- Lakatos and others v. Serbia, judgment of 7 January 2014;
- Hajnaj v. Serbia, judgment of 19 June 2012;
- Stanimirovic v. Serbia, judgment of 18 October 2011;
- Milanovic v. Serbia, judgment of 14 December 2010.

A total of 259 criminal reports against 417 people claiming torture and ill-treatment (121 of which are against police officers and prison guards) and eight criminal reports against 19 people claiming extortion of statements were filed with the Basic Public Prosecution Services in the period from 1 October 2013 to 30 June 2015. Out of these, criminal proceedings regarding 34 criminal reports were pending at the end of the year 2015. Eighty criminal reports were dismissed, six motions for indictment were submitted and one plea bargain was concluded. Similarly, seven of the eight criminal reports against 19 police officers suspected of extorting statements were dismissed; the criminal proceedings against three people, who had allegedly committed this crime, were under way.<sup>31</sup>

#### **4.5. Places of deprivation of liberty**

According to the available data, there are a total of 28 penitentiary institutions in Serbia, including:<sup>32</sup>

- 1 maximum security prison (KPZ Pozarevac–Zabela); Capacity/Current number: Convicts - 820/1513, Detainees - 200/35, Misdemeanors - 40/12
- 2 closed-type prisons (KPZ Nis and KPZ Sremska Mitrovica); Capacity/Current number: Convicts - 1327/1343, Detainees - 135/52, Misdemeanors - 25/31
- 4 open-type prisons (KPZs Padinska Skela, Sombor, Cuprija and Sabac); Capacity/Current number: Convicts - 413/276, Detainees – none, Misdemeanors - 40/16
- 1 semi-closed type prison for women (KPZ for Women Pozarevac); Capacity/Current number: Convicts - 180/280, Detainees – none, Misdemeanors - 16/11
- 1 closed-type penal-correctional facility for juveniles and young offenders (KPZ Valjevo); Capacity/Current number: Convicts - 241/269, Detainees - 24/11, Misdemeanors - 25/15
- 1 closed-type special hospital prison (KPD Hospital Beograd); Capacity/Current number: Convicts – 756/526, Detainees – 43, Misdemeanors - 10
- 1 semi-closed type educational-correctional facility (VPD Krusevac); Capacity/Current number: Convicts – 310/24, Execution of educational measures – 201

31 Human rights in Serbia: Annual Report for 2015, Belgrade Centre for Human rights: <http://bit.ly/1TYKKIO>;

32 Consulted: <http://www.uiks.mpravde.gov.rs/lt/articles/ustanove-za-izvršenje-krivčnih-sankcija/okružni-zatvori/>

- 17 district prisons (in Belgrade, Vranje, Zajecar, Zrenjanin, Kragujevac, Kraljevo, Krusevac, Leskovac, Negotin, Novi Pazar, Novi Sad, Pancevo, Prokuplje, Smederevo, Subotica, Uzice and Cacak)
- There are also 168 detention units in police stations in Serbia. All of them are under the Ministry of Internal Affairs.

#### **Ministry of Health:**

Under the Ministry of Health, there is 1 closed and 5 semi-closed psychiatric institutions for mentally disabled persons:

- Clinic for Psychiatric Diseases “Dr. Laza Lazarevic”, Belgrade (Closed institution);
- Center for mental health care in the community “Mediana” in Nis;
- Mental Health Center in Kragujevac;
- Health Center in Sombor;
- Centre for Mental Health in Kikinda;
- Mental Health Center in Vrsac;

## **4.6. Areas of concern**

### **Main institutions where the torture occurs more frequently**

Most of the institutions where people are deprived of their liberties can be described as inhuman or inadequate for detentions. First, most of the institutions are operating at the very edge of their capacities or even way beyond. So the first standard, that of space, is not fulfilled. Second, most of the prison buildings are very old (dating from the end of 19th and the beginning of the 20th century).

The National Preventive Mechanism also identified specific irregularities in the treatment of persons in police custody in 2015. In Executive Summary 33, it found that the police in many cases failed to provide persons deprived of liberty with information sheets about their rights and that police departments differently interpreted the starting moment of the deprivation of liberty.

### **Institutions that are overcrowded beyond their capacities**

Serbian penitentiaries are still overcrowded, especially the penitentiaries in Sremska Mitrovica, Pozarevac and Nis, whereas at the Belgrade District Prison the conditions can be qualified as inhuman and degrading.<sup>33</sup>

#### **KPZ Pozarevac–Zabela:**

Capacity/Current number:

- Convicts - 820/1513
- Detainees - 200/35
- Misdemeanors - 40/12

<sup>33</sup> Human rights in Serbia: Annual Report for 2015, Belgrade Centre for Human Rights:<http://bit.ly/1TYKKIO>;

**KPZ Nis:**

Capacity/Current number:

- Convicts - 1327/1343
- Detainees - 135/52
- Misdemeanors - 25/31

**Cuprija:**

Capacity/Current number:

- Convicts - 178/195
- Detainees - 54/41
- Misdemeanors - 12/10

**KPZ for Women Pozarevac:**

Capacity/Current number:

- Convicts - 180/280
- Detainees - none
- Misdemeanors - 16/11

**KPZ Valjevo:**

Capacity/Current number:

- Convicts - 241/269
- Detainees - 24/11
- Misdemeanors - 25/15

**Zajecar:**

Capacity/Current number:

- Convicts - 147/150
- Detainees - 32/28
- Misdemeanors - 8/12

**Zrenjanin:**

Capacity/Current number:

- Convicts - 93/125
- Detainees – 72/80
- Misdemeanors - 10/11

**Kragujevac:**

Capacity/Current number:

- Convicts - 55/57
- Detainees - 50/37
- Misdemeanors - 15/9

**Novi Sad:**

Capacity/Current number:

- Convicts - 233/248
- Detainees - 152/158
- Misdemeanors - 43/48

**Smederevo:**

Capacity/Current number:

- Convicts - 55/59
- Detainees - 77/44
- Misdemeanors -15/18

**Police actions during the rallies and demonstrations and the preliminary arrest stage**

From January to November 2015, six rallies were prohibited in the police jurisdictions of Belgrade, two in the Novi Pazar police jurisdiction and one in Sremska Mitrovica. The one complaint that was filed with the Ministry of Internal Affairs during this period was rejected.<sup>34</sup>

Although the police are to issue individualized and reasoned rulings on all assemblies they prohibit, the Minister of Internal Affairs of Serbia Nebojsa Stefanovic said at a news conference that the police was prohibiting all five rallies that had been scheduled in front of the National Assembly to mark the 20th anniversary of the Srebrenica genocide. These rallies had been scheduled for the same day, 11 July, but at different times by: the Serbian Patriotic Movement Zavetnici, the Dveri movement, the NGOs Women in Black and Youth Initiative for Human Rights, the Association of Families of Kidnapped and Missing Persons from 1998 to 2000 and by a private individual Nikola Aleksic. The Youth Initiative for Human Rights had also invited the National Assembly deputies and members of the Government to take part in the “Seven Thousand” drive on 11 July and thus show their compassion for the Srebrenica victims and a human and civic solidarity with their families, together with other citizens of Serbia. The Minister’s practice of publicly prohibiting assemblies is not laid down in positive regulations.

**Access to health care by people deprived of liberty**

Almost all prisons have a close cooperation with community health centers and general hospitals in their region or city. For all additional and more complex procedures, the prisoners are sent to the Special Prison Hospital in Belgrade. The main concerns are the lack of medications, not enough guards and shortage of the medical staff.

The issue with medications is that there is a positive list of drugs (which prisons purchase) and a negative list of drugs (prisoners need to bring from home). There are no painkillers allowed on the positive list which is the biggest problem.

Secondly, there are not enough guards to escort all the prisoners in need to additional reviews or medical checks, which cannot be performed in prison infirmary. Since currently

34 Human rights in Serbia: Annual Report for 2015, Belgrade Centre for Human Rights:<http://bit.ly/1TYKKIO>;

there is no employment policy issued by the Government, this problem won't be solved in a decent manner any time soon; instead, Serbia has a governmental decision to ban any new employment.

Finally, shortage of medical staff is also a problem. There are just a few prisons that have a doctor present every day in the infirmary. The medical staff (in most cases, consisting of just one staff member) is present every day (in some cases just for a few hours) and the doctor comes twice a week, although doctors and the staff members are on call every day.

### **Main concerns from the reports of UN SPT and Council of Europe CPT**

A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a visit to Serbia from 26 May to 5 June 2015. The visit was conducted according to the CPT's program of periodic visits for 2015 and was the Committee's fourth periodic visit to Serbia.

CPT issued its report on June 24, 2016<sup>35</sup> which gave good ground for further actions.

The CPT's delegation assessed progress made since the previous visit in 2011 and the extent to which the Committee's recommendations have been implemented— in particular, in the areas of police custody, imprisonment and legal safeguards for patients in psychiatric institutions. The delegation paid follow-up visits to Belgrade District Prison and the Prison Hospital. Further, it visited for the first time Valjevo Juvenile Correctional Institution, Nis Correctional Institution, and Pancevo District Prison. First time visits were also paid to Vrsac Special Psychiatric Hospital and Veternik Social Care Home in order to examine the treatment, conditions and legal safeguards offered to patients and residents admitted on an involuntary basis.

The Committee against Torture considered the second periodic report of Serbia (CAT/C/SRB/2) at its 1304th and 1307th meetings, held on 29 and 30 April 2015 (CAT/C/SR.1304 and CAT/C/SR.1307), and adopted the following concluding observations at its 1322nd and 1323rd meetings (CAT/C/SR.1322 and CAT/C/SR.1323) held on 12 May 2015.<sup>36</sup>

The main concerns regarding the situation in Serbia are:

- Lack of harmonization of articles 136 and 137, paragraphs 2 and 3, of the Criminal Code dealing with acts of torture, and the fact that they are not aligned with all elements of the crime of torture, as defined in Article 1 of the Convention.
- Reports that medical examinations of detainees are often conducted in the presence of police officers and that they frequently fail to provide a detailed description of injuries or an interpretation of the findings.
- The fact that out of 391 complaints of torture and ill-treatment filed with the Police Internal Control Department between 2009 and March 2012, only 15 percent resulted in disciplinary measures, the majority of which were fines.
- Overpopulation in 5 correctional facilities remains above 116 percent; the CPT delegation took note about the poor detention conditions, particularly in police stations, a lack of meaningful activities and interaction between persons in detention and insufficient health care services, including mental healthcare in prisons.

35 <http://www.cpt.coe.int/documents/srb/2016-21-inf-eng.pdf>

36 CPT Report for 2015: <http://bit.ly/1rddud7>;

## **4.7. Recommendations**

### **NPM Serbia**

1. The NPM has the prominent role in the monitoring and control of the prison system in Serbia. Therefore, the NPM would have the ability to improve the communication and relationship between the Ministry of Justice and the Directorate for Execution of Criminal Sanctions;
2. It should publish detailed statistics and collect disaggregated data on complaints by gender, language, location, institution, etc. about the current situation of places of detention in Serbia accessible to all stakeholders with due respect of personal data protection;
3. For the purpose of efficient functioning of the NPM, it is necessary to engage a sufficient number of employees or hired officers with the adequate knowledge in the field of prevention of torture.
4. In order to provide the conditions for the efficient operation of the NPM, it is necessary to establish a separate budget line within the budget of the Protector of Citizens for the needs of the NPM.

### **With regards to torture prevention:**

1. Reduce overcrowding – commit to eliminating the crowded conditions that exist in various prisons;
2. Improve the general conditions in prisons – the Serbian Government must improve the basic physical conditions in all prisons;
3. Promote productivity and social rehabilitation – invest in pre-and-post release programs that have been proven to reduce violence and to change behavior over the long term;
4. Use objective classification and direct supervision – incorporate violence prevention in every facility's fundamental classification and supervision procedures;
5. Quit with the policy of impunity – start to prosecute cases of torture by the security services, and those of inadequate medical attention.

### **With regards to the healthcare system:**

1. Establish a better communication between the Ministry of Health, the Ministry of Justice and the Directorate for Execution of Criminal Sanctions in order to improve the general health care of persons deprived of liberty (especially relating to the continuation of treatment after the prisoners are released).
2. Equip prison health clinics with modern and functional medical equipment that is required in order to ensure adequate healthcare for all prisoners.
3. Increase the number of health workers (doctors and medical staff) in order to secure better access to health care services to persons deprived of their liberty.
4. Protect mentally ill prisoners. Prisoners with a mental illness that would make them particularly vulnerable to conditions in detention must be housed in secure therapeutic units. Facilities need rigorous screening and assessment tools to ensure the proper treatment of

prisoners who are both mentally ill and difficult to control. Guarantee the psychological services at all levels.

5. All detention facilities should have the necessary personnel, including medical personnel. Commit to caring for persons with mental illness; identify and treat those experiencing mental problems in detention.

6. Hire professional staff (psychologists, therapists, social workers, etc.) that would provide daily psychosocial assistance and support to all persons deprived of their liberty.

7. Security officers should not attend medical examinations of prisoners, unless the general security of the medical staff is at risk. In cases of endangered safety, it is necessary to alert prison authority and make reports on all incidents.

**With regards to the rights of persons deprived of liberty:**

1. Regardless of the type of sentence being served, all prisoners should have the right to a visit of at least one hour every week.

2. In institutions where the material conditions so permit, a room should be provided for the visit of the spouse.

3. In institutions where the material conditions so permit, an additional separate room should be provided (room for religious ceremonies, room for lawyers etc.);

4. Prisoners should be able to use their right to a phone call throughout the day (not just at a specific time of the day);

**With regards to limiting inhuman treatments:**

Inadequate and inhumane treatment in prisons remains a constant, especially when it comes to health care. The cases listed are not getting their disciplinary epilogue despite educators to solve individual cases. As confirmed by reports of the Ombudsman and the CPT, the abuse of marginalized persons deprived of their liberty, during the last 3 to 5 year period, and the inadequate behavior of the health staff in these cases cause concern.

**With regards to restorative approaches:**

1. Promote a culture of mutual respect. Create a positive culture in prisons grounded in the ethic of respectful behavior and interpersonal communication that benefits both prisoners and staff;

2. Recruit and retain a qualified staff. Enact changes at the state and local levels to advance the recruitment and retention of a high quality, diverse workforce and otherwise further the professionalism of the workforce;

3. Ensure that senior staff in the prison administration headquarters and the directors of all institutions and their senior managers possess and make full use of copies of the Council of Europe's European Prison Rules. Copies should also be kept prominently in each prison library for the use of all other staff and prisoners.

### **With regards to Security Services in prisons**

1. Target the institutions that are in the greatest need of increasing the number of employees in the security services and hold a contest for filling jobs for the easier and safer operation of prison facilities;
2. Organize specialized training courses for employees of the security service at least once a year;
3. Organize regular medical checkups for employees of the security services.

### **With regards to the executive power:**

1. Undertake an assessment of domestic inspection bodies and their compliance with OPCAT requirements;
2. Require human rights proofing in all legislation concerning places of detention;
3. Foster civil society involvement in decision-making regarding prison, law enforcement, mental health, and other reforms through the establishment of permanent expertise.

### **With regards to the Civil Society actors / monitors**

1. Continue monitoring the human rights situation in places of detention, as the basic form of Torture Prevention;
2. Encourage a more active engagement of NGOs in monitoring places of detention through raising NGO capacities and fostering networking on regional and national level;
3. Actively engage in raising awareness on the UN Optional Protocol to Committee against Torture and lobby for accountability and transparency in all places of deprivation of liberty.

## **V REGIONAL APPROACH TO THE RECOMMENDATIONS AND AREAS OF CONCERN**

Comparing the areas of concern in the three countries analyzed, one can see more than one similarity in the findings. Some of them are coming from the fact that the reform process, both of the legal framework and of the approach to torture and other cruel, inhumane or degrading treatment or punishment started with democratic changes at the end of the 1990, or early 2000 and we could state that it is still in its initial phase in all of the countries. Lack of financial resources for adequate staffing and adequate refurbishment of facilities could be singled out as one of the reasons, but it should not be used as an excuse for other deficiencies in the system of torture prevention.

Similarities also come from the fact that the methodology used by NPM and other stakeholders for monitoring the state of the prisons and detention units are nearly the same and adjusted on international and on the regional level, especially baring in mind that all these countries are adjusting their policy to EU aquis in this area in the process of EU integrations, and they all have regular international observation missions, such as the CPT visits.

The regional cooperation of the NPMs, the civil society and the prison administrations is the key for developing the fight against torture, and other cruel, inhuman or degrading treatment or punishment in the region.

Recommendations, divided into different segments in each of the country reports, also can be applied in the regional context. Specificities could be seen in the levels of activities and effectiveness of the NPM systems in each of the countries, as well as in the role of the civil society in monitoring and reporting. In that sense, the recommendations from one country could be easily applied to the other two countries and the region as a whole.

This gives us further assurance that the regional approach chosen is not only valid, but also the most effective and supportive to forming a unified response to torture, or any other cruel, inhuman and degrading treatment or punishment.