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PROHIBITION OF ILL-TREATMENT AND RIGHTS
OF PERSONS DEPRIVED OF THEIR LIBERTY IN SERBIA

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PROHIBITION OF
ILL-TREATMENT AND RIGHTS
OF PERSONS DEPRIVED OF
THEIR LIBERTY IN SERBIA

Report II

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ABBREVIATIONS AND DEFINITIONS OF COMMONLY USED WORDS AND EXPRESSIONS

Abbreviations:

- BCHR – Belgrade Centre for Human Rights
 - CC – Criminal Code of the Republic of Serbia
 - CPC – Criminal Procedure Code of the Republic of Serbia
 - CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
 - ECG – Electrocardiography
- ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms
- ECtHR – European Court of Human Rights
 - JCI – Juvenile Correctional Institution
 - JPI – Juvenile Penal Institution
- NGO – Non-governmental organisation
- PSEA – Penal Sanctions Enforcement Act of the Republic of Serbia

Definitions of Commonly Used Words and Expressions:

Persons deprived of liberty – all persons placed in penal institutions within the jurisdiction of the Penal Sanctions Enforcement Directorate pursuant to the PSEA;

Prisoners – this word is used in the meaning in which it is used in the European Prison Rules and CPT documents – all persons incarcerated pursuant to a court decision for any reason; as a rule, it is synonymous to the expression *persons deprived of liberty* and *inmates*.

Ward – section of the penal institutions or person referred to a juvenile penal or correctional institution;

INTRODUCTORY NOTES

The Belgrade Centre for Human Rights has since May 2009 been implementing the project entitled “Suppressing and Punishing Torture in Serbia – from Adopting Legal Standards to Improving Practice”, aimed at advancing the legislation and practice to prevent and punish torture and other inhuman or degrading treatment or punishment. The three-year project involves systematic monitoring of the activities of all state authorities relevant to the prevention and punishment of torture and other forms of ill-treatment. As persons deprived of liberty are as a rule the most susceptible to ill-treatment, the BCHR has devoted particular attention to the work of the state authorities with jurisdiction over the establishments in which such persons are held.

Serbia has ratified a large number of international treaties, including those prohibiting torture and other forms of ill-treatment and defining protection and prevention mechanisms. These treaties include both documents adopted under the auspices of the United Nations, such as the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and documents adopted under the auspices of the Council of Europe, such as the European Convention for the Protection of Human

Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. As a member of the Council of Serbia and a signatory of the European Convention on Human Rights, Serbia is duty-bound to conform its legislation and legal practice with the case law of the European Court for Human Rights, which has made a huge contribution to defining and advancing legal standards regarding the prevention and punishment of torture and other forms of ill-treatment.

Most persons deprived of liberty in Serbia are held in establishments within the jurisdiction of the Justice Ministry i.e. the Penal Sanctions Enforcement Directorate. They comprise correctional institutions, district prisons, the Special Prison Hospital and two establishments in

which juvenile offenders are held, the Juvenile Correctional Institution in Kruševac and the Juvenile Penal Institution in Valjevo. Thanks to the fact that these establishments have become more amenable to public scrutiny in the recent years, NGOs and other organisations are now able to visit them and thus continuously monitor their work by gaining direct insight in the treatment of persons deprived of liberty.

The associates of the BCHR have paid thirty visits to these establishments from the beginning of the project until June 2011. Some of them were visited twice. The conclusions we drew on the basis of the establishments we visited in the May 2009 – July 2010 period were presented in our first report, published in 2010 under the title *Treatment of Persons Deprived of Liberty I*. This Report focuses primarily on the ten establishments we visited in the past year (from August 2010 to end July 2011) but also on the practices and problems common to all the establishments. It also reviews the punishment of torture and other forms of ill-treatment in Serbian criminal law and court practice and on the way in which the courts in Serbia apply the institute of release on parole.

The Report is divided into three parts. Part I gives a short overview of the criminal legislation relevant to the punishment of torture and of the available court practice accompanying this legislation. This Part also reviews the court practice in applying the institute of release on parole. Although the latter is not directly linked to ill-treatment, the problematic court practice regarding paroling substantially affects the rights of convicts and the work of penitentiaries.

Part II presents the general observations about the treatment of persons deprived of liberty in the penal institutions. It is divided by topics, 12 of them, and is mostly based on the conclusions we drew in the last year, as well as those we reached during our prior visits to penitentiaries. This part also comprises brief assessments of specific legal solutions regarding penal sanctions enforcement and offers recommendations on how to address some of the problems arising in this field.

Part III comprises reports on our individual visits to ten penitentiaries in the past year. These reports have already been published in bulletins on the treatment of persons deprived of liberty. These bulletins have been issued in Serbian in electronic format on a quarterly basis and are available on BCHR's website.

The BCHR owes its gratitude for the successful implementation of the project to the Penal Sanctions Enforcement Directorate, which consented to all our requests to visit the establishments and did its utmost to facilitate our visits. The BCHR is equally grateful to all the staff of the penal institutions for all its assistance and hospitality.

The publication of this report has been financially supported by the European Union and the Open Society Institute. The Belgrade Centre for Human Rights is solely responsible for the content of the Bulletin. The views expressed in the Bulletin should in no way be perceived as the views of the European Union or the Open Society Institute.

The following associates of the Belgrade Centre for Human Rights participated in the visits and drafted the report: Nevena Dičić-Kostić, Bojan Gavrilović, Marija Ilić, Žarko Marković and Jovana Zorić. They were assisted by Darko Jojić, Dubravka Neimarević and Jelena Radojković.

METHODOLOGY

We collected information on court practice regarding the punishment of all forms of ill-treatment and the application of the institute of release on parole by resorting to the possibility provided by the Access to Information of Public Importance Act, i.e. by asking all basic and higher courts in Serbia for information on any proceedings regarding the crimes of ill-treatment and torture (Article 137 of the Criminal Code) and extortion of statements (Art. 136 of the Code) conducted in these courts in the past three years (from early 2008 to late 2010). We also asked them to provide us with information on the number of proceedings on requests for release on parole. We asked the courts that had conducted such proceedings to send us photocopies of the motions for indictment, indictments and verdicts and decisions on release on parole petitions. We did not receive information from all the courts. Some courts did not reply to us at all and we after we complained to the Commissioner for Information of Public Importance; some of them either sent us the required information or let us know that they were unable to respond to our request. Some courts immediately replied, saying that they were unable to provide us with access to such information at all or in part and mostly citing lack of records of criminal proceedings by crime, which is why they were unable to identify the cases regarding torture, ill-treatment or extortion of statements. Some courts have nevertheless succeeded in identifying such cases and providing us with access to them. Some courts, on the other hand, review hundreds, even thousands of release on parole petitions every year and forwarding all the decisions on such petitions in the past three years would be extremely pain-staking, which is why we subsequently decided against seeking access to such information. Unfortunately, the largest courts, like the Belgrade ones, with the greatest caseloads, fell in the category of courts that were unable to provide us with access to the information we sought. This is why the analysis of court practice in this Report is not comprehensive. It does, however, indicate the main trends in the court practice related to ill-treatment and endeavours

to highlight the problems arising in the application of international legal standards by Serbia's courts.

As far as the research methodology applied in Parts II and III of this Report are concerned, we shall reiterate that all visits to penal institutions were conducted with the consent of the Penal Sanctions Enforcement Directorate. All our visits were, therefore, announced beforehand. We typically filed our requests with the Directorate to visit the establishments several days before the visits. The Directorate was usually prompt in granting its consent to our visits and each consent allowed the BCHR unrestricted access to the establishment premises, all non-confidential documents regarding the status of the inmates, the opportunity to interview criminal and misdemeanour convicts with their consent and in the absence of prison staff, and the opportunity to talk to all prison staff in private. All the establishments without exception afforded us with such access and opportunities. We need to emphasise that we were unable to interview remand prisoners because the Criminal Procedure Code allows visits to remand prisoners only with the consent of the judges adjudicating their cases; as we did not know who was remanded before our visits, we were unable to ascertain which judges were conducting the proceedings against them.

Our visits lasted from one to three days, depending on the size of the penal institution. Each establishment was visited by the BCHR team comprising lawyers and doctors, five people at most.

The team gathered all available information on an establishment before visiting it. The information was collected from reports by the CPT, non-governmental organisations, state authorities and the media, and through interviews with the inmates and their families. As we were unable to interview remand prisoners, we on occasion talked about the treatment of inmates in the remand wards with the lawyers whose clients were remanded in the establishment we were about the visit.

Every visit opened with an interview with the administration of the establishment, usually the governor and the heads of units. We then perused the documentation, above all records on the use of coercive measures and on disciplinary proceedings and measures. We then toured the premises used by the inmates (cells-dormitories and common facilities), the establishment kitchen, cafeteria, shower rooms and toilets, exercise yard, recreation area, the doctor's surgery and inpatient unit

(if any). We then talked to the criminal and misdemeanour convicts and the prison staff. Interviews with the convicts and remand prisoners were conducted solely with their consent; they sometimes initiated the interviews themselves during our tours of the premises. At other times, we initiated the interviews. We endeavoured to interview convicts who were the most likely to be victims of ill-treatment – those against whom coercive measures had been used or against whom a disciplinary penalty, particularly solitary confinement, had been imposed in disciplinary proceedings. All the interviews were conducted in the absence of the prison staff. We followed up on all the irregularities alleged by the convicts, by asking the prison staff to elaborate on them or by perusing the documents again. Our visits ended with interviews with the governor and/or heads of units, to sum up our impressions and obtain the necessary explanations. We gathered additional information about the establishment for some time after the visit and on occasion talked on the phone with the convicts we had interviewed during the visit and with other convicts and only then drafted our brief reports on the visits, which include brief recommendations.

We gathered information on penal sanctions from various sources throughout the year.

PART I

PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN CRIMINAL LAW AND COURT PRACTICE AND RELEASE ON PAROLE IN COURT PRACTICE

PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN CRIMINAL LAW

Under Article 4 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹, “[E]ach State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”

The Criminal Code incriminates ill-treatment and torture in Article 137. This criminal offence was introduced in the Serbian legislation in 2005. Under Article 137:

“Whoever ill-treats another or treats him in a humiliating and degrading manner shall be punished by a fine or maximum one-year imprisonment.

Whoever causes anguish or great suffering to another by use of force, threat or other prohibited means with the aim of obtaining from him or a third party information, a confession or a statement, or intimidating or unlawfully punishing him or a third party, or does so for any reason based on discrimination of any kind, shall be punished by imprisonment ranging from six months to five years.

In the event the offence specified in paragraphs 1 and 2 of this Article is committed by an official during the discharge of his duties, the official shall be punished by imprisonment ranging from three months to three years for the offence in paragraph 1 and by imprisonment ranging from one to eight years for the offence specified in paragraph 2 of this Article.”

The legislator obviously intended to incriminate torture in paragraph 2 and other forms of cruel, inhuman or degrading treatment or punishment in paragraph 1. The definition of torture resembles the one in

1 Published upon ratification in *Sl. list SRJ (Međunarodni ugovori)* 9/91.

the Convention against Torture,² but differs from it on one major point. As opposed to the Convention against Torture, under which torture is committed by or at the instigation of or with the consent or acquiescence of a public official or another person acting in an official capacity, the Criminal Code does not insist on any links between such acts and public officials. Therefore, any person can be charged with this crime, even if s/he committed it independently of any act or failure to act of a public official. The same applies to ill-treatment in paragraph 1. In the event the offence was committed by an official, it warrants a stricter penalty (maximum 3 years of imprisonment for ill-treatment and maximum 8 years' imprisonment for torture). The result of this definition of torture and other forms of ill-treatment is that cases of torture are rare in Serbian case law and that public officials are hardly ever charged with torture. For offences that qualify as torture or other forms of ill-treatment under the Convention against Torture and the case law of the ECtHR, the Committee against Torture and the Human Rights Committee, public officials are as a rule charged with the following crimes: grave bodily injury (Art. 121) or light bodily injury (Art. 122) in some cases in conjunction with the crime of abuse of office (Art. 359). Ill-treatment can also be sanctioned by invoking Article 361 on the dereliction of duty and this Article can primarily be invoked against public officials working in institutions in which persons deprived of liberty are kept. In the event the ill-treatment in penal institutions occurred due to the denial of or inadequate medical assistance, the doctor may be charged with the failure to provide medical assistance (Art. 253) or medical malpractice (Art. 251). Other health workers may also be charged with the latter crime.

The Criminal Code also incriminates torture by the crime of extortion of a confession (Art. 136). This crime is defined in the following manner:

2 The 1984 Convention against Torture defines torture in the following manner: any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." (<http://www2.ohchr.org/english/law/cat.htm>)

“An official who uses force or threat or another inadmissible method or means for the purpose of extorting a confession or a statement from a defendant, witness, expert witness or another, shall be punished by imprisonment ranging from three months to five years.

In the event the extortion of a confession or statement is accompanied by grave violence or resulted in particularly serious consequences on the criminal defendant, the perpetrator shall be punished by imprisonment ranging from two to ten years.”

It is immediately clear that this crime can be committed by acts that can simultaneously be qualified as torture and ill-treatment. Extortion of a confession or statement can, indeed, also be committed by acts not qualifying as ill-treatment either under the Serbian Criminal Code or the case law of the ECtHR, the Human Rights Committee or the Committee against Torture (e.g. by giving a promise to or deceiving the person or by applying other inadmissible means). In the event force or threat is applied, the act can always be qualified in two ways: as extortion of a confession or statement or as ill-treatment and torture. If the person sustained bodily injury, it can, as mentioned, be qualified as a grave or light bodily injury in conjunction with abuse of post. In view of all of the foregoing, the question arises which charges will be brought against a person who had committed a crime that has all the elements of torture as defined in the Convention against Torture. Prosecution for a crime warranting the strictest penalty would appear to be the most appropriate solution.

Perpetrators of torture or ill-treatment can also be charged with the crime of unlawful deprivation of liberty (Article 132) on condition that the deprivation of liberty was committed with cruelty (Art. 132(3)). The simple form of this crime is committed by any person who unlawfully detains another person, keeps that person in custody or otherwise unlawfully deprives him or her of or restricts his or her freedom of movement. The qualified form of the crime is committed by a public official. If the qualified form of the crime was committed with cruelty, it may involve actions constituting torture or another form of ill-treatment in the meaning of the Convention against Torture.

As already mentioned, the Convention against Torture not only prohibits torture committed by a public official or another person acting in an official capacity, but all forms of maltreatment committed at the explicit order or with the consent of a public official as well. An explicit order by a public official is penalised in local criminal law as deliberate incitement (Art. 34), while a public official who consented to the infliction

of torture may be accountable for the following criminal offences: abuse of official position (Art. 359), dereliction of duty (Art. 361), failure to report a criminal offence and/or the perpetrator of a criminal offence carrying a prison term of minimum five years (Art. 332).

It can be concluded that Serbia incriminates all forms of torture in accordance with Article 4 of the Convention against Torture, but the question is whether the penalties are proportionate to the gravity of the crime as stipulated by the Article. As mentioned, up to one year imprisonment is envisaged for the crime of ill-treatment, while imprisonment ranging from six months to five years is envisaged for torture. If the crime was perpetrated by a public official, s/he may be sentenced to between three months and three years of imprisonment for ill-treatment and to between one and eight years of imprisonment for torture. The simple form of the crime of extortion of a confession or statement warrants between three months and five years of imprisonment and the qualified form warrants between two and ten years of imprisonment. Infliction of a grave bodily injury warrants between six months and five years of imprisonment. The perpetrator is sentenced to between one and eight years in jail in the event the injury impaired the health of the person and put his or her life at risk or destroyed or permanently or substantially impaired or weakened a vital body part or organ or resulted in his or her permanent incapacity to work, permanently or gravely impaired his or her health or maimed him or her. In the event the grave physical injury resulted in the death of the victim, the perpetrator shall be punished to between two and twelve years in jail. The abuse of post that led to the grave violation of another person's rights warrants imprisonment lasting between six months and five years. Therefore, if an act of torture is qualified as the crime of grave bodily injury in conjunction with the crime of abuse of post, which is the least favourable qualification for the perpetrator, the perpetrator can be sentenced to maximum 13 years in jail. However, the fact that very mild sentences can be pronounced against perpetrators of grave forms of torture corroborates the assessment that the penalties envisaged for torture are not proportionate to the gravity of the crime. The Committee against Torture has already noted this in its recommendations.³ The following section gives an overview of court practice, i.e. the penalties they impose on perpetrators of ill-treatment.

3 *UN Committee against Torture, Concluding Observations*, Doc UN CAT/C/SRB/CO/1.

PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OF PUNISHMENT IN COURT PRACTICE

We mentioned in the introduction to the Report that we collected information on the court practice regarding the punishment of all forms of ill-treatment and application of the institute of release on parole by resorting to the possibility provided by the Free Access to Information of Public Importance Act i.e. by asking all courts charged with trying such crimes in early 2011 for information on whether they conducted trials against perpetrators of torture or ill-treatment in Article 137 and extortion of a confession or statement in Article 136 of the Criminal Code in the past three years (in the 2008-2010 period). We asked these courts to send us photocopies of the motions for indictment, indictments and verdicts in their possession. We also explained in the introduction that the collection of such information was anything but easy, because courts do not keep records of cases in a manner that would allow them to easily identify those regarding a specific crime or a specific category of defendants (public officials). Therefore, courts with large caseloads encounter great difficulties in singling out the cases regarding a specific crime and even greater difficulties in identifying all the cases regarding a specific category of perpetrators (which is why we did not even ask them to send us photocopies of cases in which public officials, e.g. policemen were indicted for the crimes we were interested in). Their identification of the cases we sought access to and data-processing was additionally exacerbated by the enforcement of a new Act on the Organisation of Courts⁴ as of early 2010; the former municipal and district courts, which had tried such cases until end 2009, were replaced by basic, higher and appellate courts. Moreover, the territorial organisation of the courts was

4 *Sl. glasnik* RS 116/08 and 104/09.

also changed and the archives of the former courts were moved to the newly-established ones. Not all courts responded to our requests. Some initially failed to send any replies, prompting us to complain with the Commissioner for Information of Public Importance, and then either sent us the required information or notified us that they were unable to meet our requests. Other courts either immediately responded that they were unable to respond to our requests at all or partly, most often because their records did not support search for such information. On the other hand, some courts sent us all the information we sought, including the information regarding trials held in the former courts, the jurisdiction of which they had assumed. We ultimately collected information from slightly over one half of the existing courts, which, unfortunately, does not include the ones which conduct the greatest number of trials – the Belgrade courts. Therefore, although we were unable to peruse the data of all courts, the ones we collected sufficed to ascertain, at least in principle, how the provisions of Articles 137 and 136 of the Criminal Code are being applied in practice.

We failed to find any verdicts for the crime of extortion of a confession or statement incriminated in Article 136 of the Criminal Code. On the other hand, we were forwarded 22 cases of persons accused and convicted in the first-instance or by a final decision of ill-treatment or torture, and a somewhat greater number of motions for indictment and indictments for this crime. The following text will focus only on cases in which either first-instance or final verdicts have been rendered.

In all 22 cases, the defendants were charged with the offence incriminated in paragraph 1 of Article 137, i.e. of ill-treating another or treating him or her in a humiliating or degrading manner. Therefore, we did not have access to any proceedings in which someone had been charged with torture, the gravest form of ill-treatment, but only cases in which the defendants were indicted for actions constituting other forms of ill-treatment. In 12 cases, the defendants were correctly not charged with committing the crimes they had been indicted for in the capacity of public official given that none of them had had such a status. The defendants in the other ten cases were charged with the crime in their capacity of public official. We shall focus in greater detail on the latter cases given that, under the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment and Punishment, torture i.e. ill-treatment can be

committed only if a public official or another person acting in an official capacity takes part in it. Of the ten cases, seven cases regarded policemen, one case a prison guard, one case the director of a culture hall and one case the director of a health centre. In five cases, the defendants were acquitted (three policemen, one prison guard and the director of the culture hall). The courts rendered guilty verdicts against the defendants in the other five cases. By the time this report was completed, two of these verdicts became final. All the convicted men were sentenced to conditional prison sentences. We shall now give brief descriptions of the established facts in each case and the sentences imposed on each defendant to give the readers the chance to form an impression on whether the imposed penalties were proportionate to the gravity of their crimes.

Case 1 (verdict rendered by the Zrenjanin Municipal Court). – Two policemen were indicted. It was established that when the police were collecting information from citizens in the police station, one of them grabbed the injured party by his T-shirt, threw him down on the floor, whereby he suffered light bodily injuries in the form of skin abrasions on the right shoulder and subcutaneous haematoma. That same day, he and his colleague, the co-defendant, again ill-treated the injured party in the police station, threatening and insulting him; they then ordered him to stand up, then tripped him, wrung his hand and pushed him against the table, whereby the injured party sustained a contusion and abrasion of his right shin. Finally, they again threatened the injured party, grabbed him by his clothes in the chest and shoulder areas, and one of them punched him several times in his face. The main defendant was sentenced to five months' imprisonment, but the penalty was not to be enforced unless he committed another crime in the following two years. The co-defendant was sentenced to three months' imprisonment, but his penalty was not to be enforced unless he committed another crime in the following two years.⁵

Case 2 (Zrenjanin Municipal Court). – The defendant is a policeman who was infuriated by a man who, in his opinion, called the police for no reason. He first insulted him, then punched him in his face, whereby the injured party sustained a light physical injury in the form of a small

5 Under Article 167(1(2)) of the Police Act (Sl. glasnik RS 101/05 and 63/09), the employment of an Ministry of Internal Affairs employment shall be terminated by force of law in the event s/he was convicted by a final decision for a crime prosecuted *ex officio*. Torture and ill-treatment are prosecuted *ex officio*.

haematoma near his cheekbone. The policeman was sentenced to one-month imprisonment, but he was not to serve time unless he committed another crime within the following year.

Case 3 (Negotin District Court, final and binding decision on appeal).

– The defendant is the director of a health centre. The court found that he treated the injured party, a dentist working in the health centre, in a degrading manner i.e. ill-treated him by ordering that the lock on the door of the surgery in which the injured party works be replaced, thus preventing the latter from entering his office and doing his job, so that he sat in the hall in front of the office and was thus humiliated in front of his colleagues. The defendant was sentenced to four months' imprisonment, but he was not to serve the sentence unless he committed another crime within the following year.

Case 4 (Pančevo Municipal Court, the verdict became final after the Novi Sad Appellate Court upheld the first-instance judgment). – The defendant is a policeman who slapped the injured party three times in a restaurant and in front of it while he was on duty. He was sentenced to three months' imprisonment, but would not serve his sentence unless he committed another crime within a year from the day the verdict became final.

Case 5 (Niš Municipal Court). – The defendant is a policeman who, together with his colleagues, who were also on duty, threw the injured party on the ground face down in front of a restaurant in Niš, stepped on his neck with his boot, and when the injured party protested, hit the top of his head with metal hand-cuffs, whereby the injured party sustained light physical injuries in the form of "abrasions and contusions on the top of his head". The policeman was convicted to five months' imprisonment, but would not serve his sentence unless he committed another crime within the following two years.

Therefore, in none of the verdicts were the persons found guilty of ill-treatment punished by unconditional imprisonment. As far as the above cases are concerned, we can conclude that the sentences handed down are not proportionate to the gravity of the crime in at least one case (*Case 1*). Furthermore, the offence qualified as ill-treatment in *Case 3* probably cannot be qualified as ill-treatment in the meaning of the Convention against Torture; nor can its perpetrator be considered a public official in the meaning of this Convention. There are many

similar cases in the motions for indictment and indictments we collected. They qualify as ill-treatment or torture an extremely broad variety of acts by civilians (persons who cannot be considered officials under any circumstances) – from employers insulting their workers, the threats and insults exchanged between divorcing couples in court, fistfights between minors on playgrounds, abduction of a minor and forcing him to eat onions and mustard and watch pornographic material, to actions which can qualify as ill-treatment in the meaning of the Convention against Torture. At the same time, actions constituting torture or other forms of ill-treatment in the meaning of the Convention against Torture are frequently qualified as light or grave physical injuries, sometimes in conjunction with the offence of abuse of post. We have thus come to an absurd situation in which acts that should be qualified as other criminal offences under the Criminal Code (such as light or grave physical injuries, unlawful deprivation of liberty, coercion, endangering security, extortion, blackmail, violent conduct, etc) are qualified as torture or ill-treatment, while acts, which should be penalised as torture or, more often, as another form of ill-treatment, are not qualified as such. Furthermore, the imposed penalties are truly not proportionate to the gravity of the offences. Not only judges and prosecutors are accountable for this court practice, which totally devalues the importance and gravity of ill-treatment. The most responsibility rests on the legislator, who first defined ill-treatment too broadly (Whoever ill-treats another or treats him in a humiliating and degrading manner..), then omitted the requirement in the Convention against Torture, that the perpetrator must be a public official, and lastly, laid down much too mild penalties. This is why we are of the view that the crime of torture and ill-treatment needs to be rephrased in the following manner: the crime of torture should be phrased like in the Convention against Torture, i.e. it must specify that the perpetrator is a public official; ill-treatment, more precisely inhuman or degrading treatment, should entail acts of ill-treatment lacking an element of torture and committed by public officials. It is quite easy to conclude which acts can be defined as torture and ill-treatment thanks to the ample case law of the ECtHR and the Committee against Torture.

RELEASE ON PAROLE IN COURT PRACTICE

The institute of release on parole is not directly linked to ill-treatment, but its application may affect the rights of convicts, to which a lot of attention has been devoted in this Report, and, indirectly, also the degree of overcrowdedness of the penal institutions these persons are held in. The reason why we focused on release on parole in this Report is the problematic court practice to the detriment of the convicts.

Under Article 46 of the Criminal Code, the court may release on parole a convict who has served two thirds of his/her prison sentence if s/he has improved to such an extent during imprisonment that it is reasonable to assume that s/he will behave well upon release and particularly that s/he will refrain from committing a new criminal offence until the end of the imposed prison sentence. The prior Criminal Code allowed for paroling a convict who had served half of his/her sentence. Under Article 5(1) of the Criminal Code, the law in force at the time of commission of a criminal offence shall apply to the offender, i.e. a convict, who had committed a crime when the prior CC was in force and was convicted pursuant to it, shall be eligible for release on parole under the prior CC as well. This, however, does not always occur in practice. Quite a few judges apply the valid Criminal Code provision on parole to convicts convicted under the prior Criminal Code, which is, needless to say, less favourable for them. There are no legal grounds for this practice. To reiterate, the valid Criminal Code states that the law in force at the time of the commission of the crime shall apply to the perpetrator of the crime. Therefore the whole law, including the provision specifying after which period of time a convict may be paroled, not only the provisions specifying the penalties for the crimes, are to be applied. The fact that judges err in applying such simple criminal law rules in practice is crushing. Fortunately, an inmate is entitled to appeal a decision not to release him/her on parole.

PART II

GENERAL OBSERVATIONS ABOUT THE TREATMENT OF PERSONS DEPRIVED OF LIBERTY IN PENAL INSTITUTIONS

1. ALLEGATIONS OF ILL-TREATMENT

As noted in the Introductory Notes, we obtained information on the alleged ill-treatment of persons deprived of liberty in penitentiaries in the same manner as during the first year of project implementation, i.e. by monitoring the treatment of such persons.⁶ This Report is therefore largely based on the information we collected during our visits to the establishments. Furthermore, we received a much greater number of complaints about the conduct of penitentiary staff from persons deprived of liberty or their families by telephone or post than during the first year of project implementation, which is understandable because the convicts had been able to obtain our address and telephone numbers during our previous visits and the visits of other NGOs. It needs to be highlighted that very few of the numerous grievances reported to us regarded ill-treatment. Most of them related to the exercise of specific rights guaranteed under the Penal Sanctions Enforcement Act (notably, we received complaints from convicts who wanted to be transferred to another penitentiary or who were displeased with how they were categorised i.e. were not eligible for privileges and to leave the establishments over the weekend or take annual leaves) and to the work of the courts. We must also note that, due to the limitations set by the Criminal Procedure Code⁷, we were able to hear

6 More in *Treatment of Persons Deprived of Liberty I*, Belgrade Centre for Human Rights, 2010, pp. 9–10 and 17.

7 Under Article 150 (1) of the Criminal Procedure Code, a remand prisoner may be visited by his/her close relatives and at his/her request by a doctor and other persons with the approval of the investigating judge and under his supervision or the supervision of a person designated by him in accordance with the House Rules of the establishment. Under paragraph 3 of this Article, “a remand prisoner is entitled to a visit or interview in the absence of other persons by the Protector of Citizens, a National Assembly Committee in accordance with the law and by an international organisation in accordance with a ratified international treaty”. Therefore, a remand prisoner may be visited by a national non-governmental organisation only at his/her request, with the consent of the judge. As we did not know who had been remanded prior to our visits, we were unable to ask these persons to seek the judges’ consent to the visits. We therefore did not interview

about the remand prisoners' complaints about the work of penitentiary staff only from their attorneys or families. We told the persons, who had phoned or written us alleging violations of their rights, about the rights protection mechanisms at their disposal and the circumstances in which they could be afforded such protection.

We heard hardly any allegations of ill-treatment in the smaller establishments we visited in the past year (from August 2010 to end July 2011), notably in the district prisons, as well as the Belgrade Correctional Institution – Padinska Skela and the Valjevo Juvenile Penal Institution (JPI). The few complaints about the staff we heard in these institutions regarded its threats to use physical force or improper communication rather than the use of force with elements of ill-treatment. The same applies to most of the Sremska Mitrovica Correctional Institution (the largest penitentiary in Serbia, holding over 2000 prisoners). Complaints about the conduct of the guard units, including those of alleged physical abuse, were extremely rare in that establishment as well. Several convicts did, however, claim that the situation was somewhat worse in the Pavilion 3, where convicts serving their disciplinary penalties or under enhanced supervision are kept. They allege that the guards in this ward have been known to resort to force without cause. True, none of these convicts claimed that they personally had been victims of illegal use of force, but, rather, that they had witnessed or heard of such cases.⁸ In any case, the penitentiary staff should ensure that force is not used illegally in any part of the establishment, no matter whether the convicts are undisciplined or not. The guards working in large and overcrowded penitentiaries have a hard time maintaining order and discipline, of course, but they should nevertheless not resort to illicit means under any circumstances.

We heard the greatest number of complaints about the conduct of the guards in the Kruševac Juvenile Correctional Institution (JCI); most of the wards we talked to claimed that the guards there on occasion applied

any remand prisoners during our visits. This provision in the CPC definitely does not facilitate the protection of the rights of remand prisoners, who are as a rule the most likely to complain of some form of physical ill-treatment, which usually occurs during arrest or police custody; once they are in remand, they have no reason to fear that they will suffer any consequences if they report the ill-treatment the police had subjected them to.

8 More on the treatment of inmates in the Sremska Mitrovica Correctional Institution in III.7.2.

unjustified or excessive force in lieu of the disciplinary measures foreseen by the law. They claim that the juveniles subjected to them are rarely taken to see the doctor or are examined with delay.⁹ We were unable to verify these allegations during our visit, because none of the wards we saw had visible traces of injuries. Regardless, this establishment needs to pay particular attention to limiting the use of force only to situations in which it is allowed to under the valid regulations, particularly in view of the fact that it holds juveniles and young adults. The practice of prohibiting visits to wards subjected to the disciplinary measure of segregation definitely is not conducive to identifying and preventing ill-treatment because they cannot complain to their parents if they are abused. We believe that there are no legal grounds for such a practice, as we elaborate later on in Chapter 10 of this Report on the inmates' contacts with the outside world. Another provision not conducive to identifying and preventing ill-treatment is Article 81(2) of the PSEA, under which a convict in solitary confinement is not entitled to visits, apart from his/her defence counsel or current or future legal representative.

Convicts, who allege that they had been exposed to ill-treatment or that they had witnessed or heard that someone was ill-treated, still rarely report such ill-treatment to the heads of the penitentiary units or the governors. More, however, feel free to report ill-treatment or alleged violations of other rights in their letters to the Penal Sanctions Enforcement Directorate or the Protector of Citizens. Lack of trust is the main reason why they are loath to share their grievances with the establishment staff and governor. They claim that the penitentiary staff rarely takes their claims of ill-treatment seriously and even ignores them; furthermore, the convicts fear that the staff, whose illegal treatment they are alerting to, or their co-workers may retaliate against them. Lack of awareness of the available protection mechanisms is another reason why the inmates rarely report such cases to the competent authorities. Some convicts are unaware that they can file a grievance or complaint with the Penal Sanctions Enforcement Directorate under specific circumstances in case their right has been violated and even fewer are aware that they can also complain to the Protector of Citizens. The penitentiaries should thus provide easy access to the valid regulations to all persons deprived of liberty. It would

⁹ More on the treatment of the wards of the Kruševac Juvenile Correctional Institution in III.2.2.

be even more useful if they provided them with a sufficient number of brochures explaining how they can realise their rights. We are, of course, aware that the copies of regulations and brochures are often destroyed in the penitentiaries, but this should not discourage the administrations from continuing to provide them and placing them at the inmates' disposal.

Lastly, we would like to underline that more frequent tours of the premises occupied by the inmates by the governors and the heads of the penitentiary units, primarily the guard unit, and their talks with the inmates are extremely useful in the prevention and identification of ill-treatment. In particular, the establishment officials should regularly tour the wards in which convicts under solitary confinement, enhanced supervision or segregation are kept. From what we could see during our visits to penitentiaries in the past two years, the fewest complaints about the work of the staff were voiced in institutions in which the heads of units or governors frequently visited the inmates, in which the inmates were able to get in touch with them easily and the officials did their utmost to be at the disposal of the inmates when necessary. This approach can, of course, prove effective only if the staff and governors take the allegations of the inmates, particularly those regarding any form of ill-treatment, seriously and with due attention.

2. USE OF COERCIVE MEASURES

We paid particular attention to records on the use of coercive measures during each visit. We were guided by the belief that such records would give us at least partial insight in the extent in which the guards abided by the legal provisions and in which the medical staff, i.e. the doctor in the establishment, was aware of his/her obligations regarding the use of coercive measures, which is extremely important for preventing ill-treatment and precluding its concealment. These records have also proven useful in identifying convicts who may be interesting interlocutors and alert to any irregularities in the establishment.

In the absence of a uniform procedure, Serbian penitentiaries apply diverse procedures for keeping records on the use of coercive measures and keep different kinds of records. In some penitentiaries, the doctors' reports on examinations after the use of coercive measures are not kept in the records on the use of coercive measures, but only in the health files of the convicts subjected to them. Other penitentiaries keep these reports together with the reports on the use of coercive measures in the records kept by the guard unit and in the convicts' health files, while some other penitentiaries file them in three copies – with the reports on the use of coercive measures in the records kept by the guard unit, in the convicts' health files, and in separate records kept by the health care unit. None of these discrepancies necessarily cause great problems as long as the examinations are actually conducted and the reports prepared and submitted together with the guard units' reports to the governors, charged with checking whether the use of coercive measures had been lawful, which, judging by everything, seems to be the case.

This is not the only area in which penitentiary practices vary. As the penitentiary records show, they apply different practices with respect to re-examinations after the use of coercive measures as well. Some penitentiaries re-examine the convicts subjected to coercive measures once, between the 12th and 24th hours from the time the measure was

used, as the valid PSEA lays down,¹⁰ while other penitentiaries still re-examine the convicts twice, after 12 and then again after 24 hours, as provided for by the old PSEA. There are, unfortunately, penitentiaries in which the convicts subjected to coercive measures are not re-examined at all. Furthermore, quite a few medical reports on the use of coercive measures, where the doctors found injuries, lack the convicts' statements on how they had sustained the injuries or the doctors' opinions on any links between the measure and the injuries, notwithstanding the explicit provision in the PSEA obliging them to record these statements.¹¹ All this indicates that not all penitentiaries approach with due seriousness their obligations to record and conduct the legal procedures applied when coercive measures are used. It would thus be useful to introduce uniform reporting templates and ensure that all penitentiaries follow the same procedures, in accordance with the PSEA. The doctors, in particular, should be made well aware of the procedures envisaged by the PSEA. As noted, although the new PSEA came into force several years ago, some of them still apply the provisions in the old PSEA (and re-examine the convicts twice) or, which is even worse, are unaware of their obligations under the law (e.g. do not know that they are under the obligation to re-examine a convict subjected to a coercive measure (which is rarer) or what they should include in the report on the examination (which is more frequent). Commendably, examinations after the use of coercive measures, like all other medical check-ups, are as a rule conducted in the absence of the guards,¹² which means that the convict against whom a coercive

10 Under Article 130(3) of the PSEA, "A convict subjected to a coercive measure shall be examined by a doctor immediately after the use of a coercive measure, with the exception of restraint, and re-examined between the 12th and 24th hours from the moment of the use of the measure".

11 Under Article 130(4) of the PSEA: "The medical report shall comprise also statements by the person against whom a coercive measure was applied about how the injuries were sustained and the doctor's opinion on the link between the applied measure and the sustained injuries. The governor shall notify the Director of the Directorate of the application of the coercive measure and forward him the reports within 24 hours from the time the coercive measure was applied".

12 During our visits before the publication of our first Report, we noted that this practice was not applied only in the Negotin, Smederevo and Užice District Prisons, where the medical examinations were as a rule conducted in the presence of the guards. The Smederevo District Prison in the meantime abandoned this practice and check-ups in it are now conducted in the absence of non-medical

measure was applied can freely and without fear of being overheard by the guards tell the doctor how he had sustained his injuries (if any) and immediately alert to any ill-treatment. How much time passes between the application of a coercive measure and the first examination depends on the way in which the work of the health care unit in a penitentiary is organised. Some establishments, which cannot provide for round the clock presence of medical staff, call in the paramedics in such situations; others call in the penitentiary doctor if he is not already in. Regardless of which of these two models is applied, it is crucial to ensure that the examinations are always conducted on time and that proper reports on them are prepared. Convicts subjected to coercive measures apparently have no major problems accessing these medical reports.

staff, as we saw for ourselves during our second visit to this establishment. It has, however, persisted in the Negotin District Prison, which we visited again in June 2011. We had not paid another visit to the Užice District Prison by the end of the reporting period wherefore we were unable to ascertain whether this establishment has also abandoned this practice. We recall here again the CPT's view that a prisoner against whom any means of force have been used should have the right to be immediately examined and, if necessary, treated by a medical doctor. This examination should be conducted out of the hearing and preferably out of the sight of non-medical staff, and the results of the examination (including any relevant statements by the prisoner and the doctor's conclusions) should be formally recorded and made available to the prisoner. (*CPT 2nd General Report, 1992, paragraph 53*).

3. INMATE-STAFF RELATIONS

The functioning of and atmosphere in every penitentiary greatly hinges on the staff's treatment of the inmates. Where inmates are treated with respect and dignity, the risks of hostilities and tensions and inter-prisoner clashes are lesser, as is the likelihood of conflicts between the staff and inmates, which may become physical and even threaten the safety or security of either party. This is why we endeavoured to gain insight in the overall atmosphere in all the establishments we visited and paid particular attention to the conduct of all penitentiary staff towards all persons deprived of liberty.

We noted and emphasised in our first Report¹³ that the best interpersonal relations were to be found between the inmates and prison staff in minimum security penitentiaries and small district prisons, which does not come as a surprise in view of the fact that convicts sentenced to short prison terms are referred to these institutions. These convicts are in principle less violent and have less difficulty in establishing good communication with the penitentiary staff than convicts held in large high security penitentiaries. The good relations between the staff and inmates in these institutions can also be attributed to the fact that convicts can usually easily access the staff of these establishments, particularly the heads of the units and the governors, who more or less regularly visit them and talk to them about any problems in the penitentiary. We saw extremely positive examples of communication between the administration and inmates in e.g. Belgrade Correctional Institution – Padinska Skela, where the convicts elect their representatives to articulate their views and discuss with the administration the ways to address any outstanding problems, or in the Smederevo District Prison, where the representatives of the administration and the inmates meet once a week to talk over any issues. We are, of course, aware that it is very difficult to organise such meetings in larger and seriously overcrowded penitentiaries, but the heads of the

13 See *Treatment of Persons Deprived of Liberty I*, Belgrade Centre for Human Rights, 2010, p. 27.

units and governors in them should nevertheless try to be in contact with persons deprived of liberty as often as they can. It needs to be noted that notwithstanding the extreme overcrowdedness and, consequently, the excessive staff workload in the largest penitentiary in the state, the one in Sremska Mitrovica, we did not hear many complaints from convicts about how most of the staff treated them.¹⁴ We can generally conclude that the vast majority of the staff working in penitentiaries we visited over the last year treats the inmates in a satisfactory manner. We, of course, also had the opportunity to hear the allegations of convicts about how badly they were treated by the staff. Individual examples of such conduct are detailed in Part III of this Report.

Most of the convicts' grievances about the staff's work or decisions regard their categorisation. Those referred to the high security wards (groups V1 or V2) are, of course, the most dissatisfied. The new Rulebook on Treatment, Treatment Programme, Categorisation and Re-Categorisation of Convicted Prisoners,¹⁵ which came into force in October 2010, made substantial changes in the categorisation procedure. Under the Rulebook, the treatment programme (the group the convict is referred to) is established on the basis of the assessment of the risks, capacities and needs of the convicts (Art. 8(1)). The risk assessment procedure has undergone the greatest changes in the new Rulebook. Risk assessment is conducted by filling a questionnaire with a list of questions i.e. criteria taken into account to assess the degree in which the convict's behaviour poses a risk. These criteria include the type and gravity of the crime s/he committed, the sentence imposed on him/her, whether s/he committed the crime intentionally or unintentionally, whether s/he reported to the prison to serve his/her sentence of his/her own accord or had to be brought in by the police, what his/her views of his/her crime and penalty are, his/her prior convictions, whether s/he is being tried for another crime, his/her prior conduct during incarceration, his/her psychological, social and health features of the convict (Art. 9(1)). After the assessment, the risk the convict poses is qualified as low, medium or high depending on: 1) the threat the convict poses to other inmates, penitentiary staff or other persons visiting the penitentiary; 2) likelihood of self-harm

14 More on the situation in the Sremska Mitrovica Correctional Institution and the convicts' grievances about how they are treated by the staff them in III.7.

15 *Sl. glasnik RS* 72/2010.

or suicide; 3) likelihood of escape; 4) risk to the community in case of escape or upon release; 5) likelihood of re-offending upon release (Art. 9(2)). There are two types of questionnaires: one for convicts sentenced to maximum three years' imprisonment and the other for convicts sentenced to more than three years' imprisonment. Both questionnaires are extremely detailed. The first one, for convicts sentenced to maximum three years' imprisonment, comprises 53 criteria on which the degree of risk they pose is assessed, while the questionnaire for convicts sentenced to more than three years' imprisonment includes many more criteria and necessitates the collection of a lot of information about a convict. The introduction of this risk assessment procedure definitely contributes to the impartiality and transparency of convict categorisation and marks headway in the Serbian penal sanctions enforcement system. Apart from the detailed definition of the categorisation criteria, the counsellors still play an extremely important role in assessing whether they are fulfilled but it is now much easier to establish why a counsellor made a specific assessment.

The counsellors we had the chance to talk to say that the new risk assessment/categorisation procedure has eased the convicts' pressures on them because they are now clearer on which criteria the decision on their categorisation was reached. Some counsellors alerted us to some deficiencies of the questionnaires – they are of the view that the questionnaires are not fully tailored to the Serbian prison population and that there are instances where convicts they assess as “serious criminals” i.e. high risk inmates, should end up in the medium security wards under the questionnaire criteria although they ought to be referred to the high security ward because of the gravity of the crimes they committed. Notwithstanding, nearly all the counsellors we talked to about this topic qualified the adoption of the new Rulebook as a positive change and expressed the view that all of its shortcomings, like the above-mentioned ones in the questionnaires, can be eliminated during its application.

Most of the convicts do not have an opinion on the new categorisation procedure, but they have drawn our attention to the fact that the way the counsellors' units work has substantially changed since the new Rulebook came into force. They say that the counsellors are spending less and less time with them and some say they have not had any contact with their counsellors for over six months. Furthermore, convicts no longer know

who their counsellors are and which of them assesses their individual progress in resocialisation. Under the new regulations, the counsellors' unit is charged with fulfilling all the duties and the unit staff decide amongst themselves who will do what. The convicts say that this has resulted in a break-off of nearly all live contacts between them and the counsellors and that they now mostly communicate with each other in writing. This problem is, of course, less pronounced in smaller penitentiaries with fewer convicts per counsellor than in the large and extremely overcrowded establishments. We checked these allegations during our interviews with the counsellors and established that they were mostly true. The counsellors attribute the change in the way they work, i.e. fewer and fewer direct contacts with the convicts to the fact that the fulfilment of the obligations in the new Rulebook, notably the completion of the questionnaires, takes up much more time than it used to. Namely, the counsellors need to enter in the questionnaires information from various sources, including the police, prison, police and medical documents, information obtained from the social centres, the convicts' families and courts, which can be quite time-consuming. Even when they have no trouble obtaining the data, the completion of the questionnaire takes a lot of time. The counsellors say that they can on average fill around two questionnaires during one workday. When one takes into account that the risk assessments need to be conducted for all convicts serving their prison sentences, it is clear that the counsellors in every penitentiary, particularly the most overcrowded ones, are spending most of their working hours assessing risks and do not have much time to talk to the convicts, at least not now, at the beginning of the application of the Rulebook. The example of the counsellors' unit in the Sremska Mitrovica Correctional Institution is the most illustrative: 20 counsellors have to collect data to make risk assessments for nearly 2000 convicts and simultaneously carry out other duties, such as review the convicts' complaints, draft their expert opinions on parole petitions and talk with the convicts. To conclude, judging by everything we heard from the counsellors and convicts during our visits to the penitentiaries, the adoption of the new Rulebook is unquestionably a positive change and introduces more progressive solutions. Greater effectiveness will be achieved if their implementation is carefully analysed, if steps are made to ease the overcrowdedness of the penitentiaries or to at least hire more counsellors in the understaffed establishments, such as, e.g. the one in Sremska Mitrovica.

4. INTER-PRISONER VIOLENCE

The penitentiary staff is under the obligation not only to refrain from any ill-treatment of persons deprived of liberty but also to prevent inter-prisoner abuse and violence and, in case of such incidents, react adequately, i.e. promptly intervene and take measures envisaged by the law to penalise the offenders either in in-house disciplinary proceedings or by initiating criminal proceedings against them. This is why we endeavoured to find out in every penitentiary we visited whether their guard units had the manpower and equipment they needed to ensure the safety of all the persons in the establishment. We also sought to establish in our interviews with the convicts whether they felt safe and whether there were situations when the guards, in their opinion, had not reacted adequately and had failed to protect someone from violence.

Most of the district prisons we visited did not have persisting serious problems with inter-prisoner violence, but had occasionally been the scene of incidents, sometimes grave ones. For instance, during our visit to the Prokuplje District Prison, we were told about an incident involving the sexual abuse of a remand prisoner and that criminal charges were raised against the perpetrator. In the Pančevo District Prison, we heard that some convicts had tried to dominate others, blackmailed them and occasionally took their packages away from them; they were subjected to the necessary measures (placed in the enhanced supervision ward); furthermore, one convict in this prison was criminally charged for inflicting light physical injuries on another prisoner. Of the district prisons we visited in the past year, the greatest number of incidents was recorded in the Zaječar District Prison – as many as 21 assaults on convicts took place in 2010 and in the first few months of 2011. The guards in this prison have also found life-threatening objects, such as shivs, during cell searches. The convicts' allegations that the guards usually react with great delays to the convicts' calls via the cell call system also gives rise to concern for the inmates' safety. Fortunately, these establishments do not have large dormitory-cells which always carry a greater risk of physical altercations breaking out and of the harassment of the weaker prisoners.

The two juvenile establishments we visited in the past year suffered from an extremely high degree of inter-inmate violence. Each institution thus had to isolate a group of young men in a separate ward. The Valjevo Juvenile Penal Institution (JPI) placed in the enhanced supervision ward the wards continuously aspiring to impose themselves as leaders of the informal system and entering into physical clashes, while the Kruševac Juvenile Correctional Institution (JCI) moved to the high security ward the wards, who had been disrupting order and threatening the safety of the other inmates.¹⁶ Both groups of wards, most of whom are young adults, have thus been subjected to a regime in which they have limited opportunity to partake in resocialisation activities organised in these establishments. A number of clashes amongst the Valjevo wards have broken out over extortion. On the other hand, the wards of the Kruševac penitentiary sometimes use extremely dangerous implements in their clashes, such as cobblestones, which they dig out of the paths in the yard and hurl at each other. Paving the cobblestone paths in the yard would deprive the wards of access to at least these harmful objects. Maintaining order in both establishments is exacerbated by specific factors brought on by their architectural design. The Valjevo JPI, for instance, has large dormitory cells. Both establishments have daily activity regimes under which nearly all the convicts in the establishment spend time together in large groups during the day. Furthermore, the guard units of both institutions are understaffed. In addition, the Kruševac establishment faces a problem arising from the status of workers actually engaged on security duties but formally hired as “programme assistants“, wherefore they are not allowed to use coercive measures under the law, the authority they must have if they are to perform the duties they are charged with.

The reconstruction of several pavilions in the Sremska Mitrovica penitentiary in the last few years did away with the large dormitory-cells that had been shared by between 80 and 90 convicts and in which it was very difficult to prevent physical clashes or the abuse of individual convicts. Not more than six convicts now share cells in the new and renovated high security ward buildings. This penitentiary has, however, recently been forced to convert additional facilities into cells to address the overcrowdedness – these cells are shared by over six inmates and controlling the safety in them may be somewhat more challenging,

16 More on the situation in the Valjevo JPI and the Kruševac JCI in III.4 and III.2.

particularly at night-time. Although the convicts in the high security ward mostly sleep in smaller cells, there are risks of inter-prisoner violence or harassment during the day, when the cells are not locked and there are fewer guards on duty in the pavilions. Although the medium security ward has two large dormitory-cells, with around 50 beds each, incidents in it are infrequent because they are occupied mostly by non-violent middle-aged and elderly convicts. The convicts we talked to in this penitentiary said they did not fear for their safety and that the guards were capable of protecting them from any assaults. However, the risk of physical clashes between the convicts breaking out or of persistent harassment of convicts going undetected in this establishment should not be ruled out given its extreme overcrowdedness (2122 people were incarcerated there at the time of our visit, although it was designed to hold not more than around 1500 inmates) and lack of guards. This is why urgent steps need to be taken to cut down the number of convicts and increase the number of guards in it.

All penitentiaries try to prevent inter-prisoner violence by separating the clashing convicts, placing the violent and problematic convicts under enhanced supervision, searching the premises and inmates, and subjecting the perpetrators of violence to disciplinary measures, usually solitary confinement. Unfortunately, violence prevention is hindered by the fact that the guard units of most penitentiaries are understaffed.

We had not heard of any ethnically motivated incidents in any of the establishments we visited over the last year. Although some of the convicts we had talked to were extremely biased against the Roma, the share of inmates with such a view of this ethnic group does not appear to be greater than in the general population. If there is any inter-prisoner discrimination, it is as a rule directed against indicted or convicted sex offenders, who are thus the most susceptible to being exposed to violence.

5. DISCIPLINARY OFFENCES, PROCEEDINGS AND MEASURES

No substantial changes in laws regulating disciplinary offences, proceedings and measures against persons deprived of liberty were made since Report I was published (although the new Rulebook on House Rules in Correctional Institutions and District Prisons came into force in 2010).¹⁷ Therefore, the PSEA¹⁸ still regulates the graver disciplinary offences and the Rulebook on House Rules in Correctional Institutions and District Prisons¹⁹ the lighter disciplinary offences perpetrated by convicts and remand prisoners. The disciplinary procedure is governed by both the PSEA and the Rulebook on Disciplinary Offences and Proceedings against Convicts²⁰. The Rulebook on House Rules in Remand Wards²¹ defines the disciplinary offences committed by remand prisoners, while the penalty (restriction of visits) and its imposition are regulated by the Criminal Procedure Code²².

Disciplinary proceedings against remand prisoners are rare. The courts, charged with conducting these disciplinary proceedings, rarely react to penitentiary guard unit motions to initiate proceedings against remand prisoners. It needs to be highlighted that the CPC envisages only one disciplinary penalty for remand prisoners – restriction of visits. This is not a good solution, because there is only one reason – security - why any inmate's contacts with the outside world should be limited. As the CPT notes, “[I]t is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close

17 *Sl. glasnik RS* 72/2010.

18 Art. 145, PSEA.

19 Art. 79(2), Rulebook on House Rules in Correctional Institutions and District Prisons.

20 *Sl. glasnik*, 59/2006.

21 Art. 46(2), Rulebook on House Rules in Remand Wards.

22 Art. 151, CPC

friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations.”²³

It would thus be best to replace the valid regulation by penalties similar to the ones applicable to convict prisoners (restriction or prohibition on receiving packages, reduction in or denial of spending money, solitary confinement) and ensure that the judges duly react to penitentiary motions for disciplinary punishment. These steps would help the penitentiary staff maintain order and discipline in the remand ward.

Self-harm is still punishable, given that the PSEA provision qualifying it as a gross disciplinary offence is still in force. Under Article 145(1(15)) of the PSEA, “wilful damage to one’s health with the intention of avoiding the performance of duties” shall be punishable as a gross disciplinary offence. It, however, seems that most penitentiaries punish all self-injuries, not only the ones inflicted “with the intention of avoiding the performance of duties”, whatever this vague phrase may actually mean. We can only reiterate that we consider this practice wrong and that an end should be put to it. It may also lead to tragic consequences, if the convict who had injured himself is punished by solitary confinement, which is frequently the case. The CPT also qualified such practice as erroneous. In the view of the CPT, “acts of self-harm may frequently reflect problems and conditions of a psychological or psychiatric nature, and should be approached from a therapeutic rather than a punishment-oriented standpoint”.²⁴

Another problematic provision of the PSEA is also still in force although the practice based on it is in contravention of CPT standards and European Prison Rules. Article 151(2) of the PSEA lays down that a prisoner must be examined by a doctor before placement in solitary confinement. The purpose of this examination is to establish whether the convict is physically and mentally capable of undergoing this form of punishment (Rulebook on Disciplinary Offences, Measures and Proceedings against Convicts, Art. 27(paragraphs 2 and 3)). The Rulebook also stipulates medical examinations prior to the enforcement of the measure of isolation (Art. 140(3)), which, although not a disciplinary

23 CPT 2nd General Report, [CPT/Inf (92) 3], paragraph 51

24 See CPT, Armenia, 2007, paragraph 95.

measure, essentially entails identical treatment as solitary confinement. As mentioned, this is in contravention of CPT standards. The CPT has frequently highlighted that the prison doctor acts as a patient's personal doctor and that, consequently, in the interests of safeguarding the doctor/patient relationship, he should not be asked to certify that a prisoner is fit to undergo punishment.²⁵ The obligation of the prison doctor to issue consent for solitary confinement in the PSEA used to be provided for also by the European Prison Rules²⁶, but was abolished during the last revision of the Rules in 2006, precisely for the reason highlighted by the CPT, the necessity that the prison doctor and prisoner establish a good relationship of confidence, similar to the relationships established between doctors and patients outside prison. This is why this provision of the PSEA needs to be amended; until then, penitentiaries with more than one doctor should endeavour to ensure that the pre-solitary confinement examination is not conducted by the doctor ordinarily caring for the health of the convict ordered placement in solitary confinement, which is not yet common practice.

As regards the enforcement of the solitary confinement disciplinary measure, it needs to be noted that establishments which do not have doctors in-house on an everyday basis cannot ensure the implementation of the legal provision under which the doctor must visit a convict in solitary confinement at least once a day.²⁷ These establishments need to ensure that convicts in solitary confinement are frequently visited by a medical technician, counsellor or the governor.

The solitary confinement cells we saw in all the establishments we visited in the last year satisfy the PSEA requirement, according to which every convict must have at least four square i.e. eight cubic metres of living space (Art. 67(1)), and nearly all of them satisfy the CPT standard, under which a solitary confinement cell may not be smaller than six square metres in area. All solitary confinement cells have beds, but, in the Valjevo JPI, we noted that the prisoners were not allowed to use them during the day. This penitentiary raises the mattresses against the wall and locks

25 CPT General Report, 1993, paragraph 73.

26 See also the *Commentary on Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules in European Prison Rules, Council of Europe Publishing*, p. 68.

27 Art. 153, PSEA.

them so that the convicts cannot sit or lie on them during the day, i.e. they can either spend the day sitting on a chair, standing or pacing up and down the cell. The chair is very uncomfortable and spending hours sitting on it, just like standing or walking in an area of just several square metres, can be unpleasant, even inhumane. Such beds can be seen in a number of other penitentiaries and solitary confinement cells, but none of the other institutions raise the mattresses against the wall and lock them anymore and the convicts are allowed to sit or lie on them during the day as well. This is why we are of the view that the wards in solitary confinement in the Valjevo JPI should also be provided with the possibility of using their bed during the day and undergo this disciplinary measure in a more humane manner.

The juveniles held in the Kruševac JCI cannot be punished by solitary confinement in disciplinary proceedings. Segregation in a separate cell is the gravest disciplinary measure that may be imposed on them²⁸. Under this measure, juveniles are continuously kept in a separate cell in groups of two or more.²⁹ Several things caught our attention during our visit to this establishment. First, the hygiene in the room in which the segregated juveniles are held, particularly the cleanliness of the bedding, is poor; some wards claim that they had contracted skin diseases whilst in segregation. Furthermore, the segregated wards are not permitted visits, although this prohibition is not laid down in the law. This issue is elaborated in greater detail in Chapter 10, devoted to the realisation of the right to contact with the outside world of persons deprived of liberty. Wards, who had been punished by segregation, also told us that the doctor, counsellor and governor did not visit them as often as is stipulated in the Rulebook on House Rules (under which segregated wards should be visited at least once a day by the doctor and counsellor and at least once in three days by the governor).³⁰

Based on our interviews with the convicts and insight in all the documentation kept on disciplinary proceedings, we may conclude that disciplinary proceedings are conducted in accordance with the law. None of the convicts we talked to had hardly any serious complaints about how disciplinary proceedings were being conducted. None told us that the

28 Art. 68(1), Rulebook on House Rules of the Juvenile Correctional Institution, *Sl. glasnik RS* 71/2006.

29 Art. 72, Rulebook on House Rules of the Juvenile Correctional Institution.

30 More on the treatment of the Kruševac JCI wards, including the implementation of the segregation measure, in III.2.2.

proceedings were conducted in the absence of the offending convict or that s/he was not allowed to defend him or herself. We also did not hear any allegations that a convict had not been given enough time to prepare his defence. The convicts are allowed to hire an attorney to represent them in disciplinary proceedings. The Penal Sanctions Enforcement Act and the Rulebook on Disciplinary Offences, Measures and Proceedings against Convicts guarantee the convicts the right to professional legal aid of their choice. The convicts must be notified of this right in the summons to the disciplinary hearing. Professional legal assistance may be provided by a law graduate and the convict must be given a list of law graduates employed by the penitentiary who are able to provide him/her with professional legal aid.³¹ Smaller penitentiaries, however, as a rule have only one law graduate on staff, who is as a rule charged with conducting the disciplinary proceedings and thus cannot assist the convict. This is why only large penitentiaries employing more than one law graduate are capable of providing the convicts with legal assistance. Fortunately, we have noted that fewer and fewer penitentiaries do not employ any law graduates. The administrations of the smaller establishments we visited told us that they had not had law graduates on staff until recently and had therefore encountered problems in conducting disciplinary proceedings. The situation has been changing for the better recently and should positively reflect on persons deprived of liberty as well.

Most penitentiaries regularly update records on disciplinary measures and deliver hard copies of the decisions on the imposition of disciplinary measures to the convicts, who are entitled to appeal them.

31 Art. 53, Rulebook on Disciplinary Offences, Measures and Proceedings against Convicts.

6. SPECIAL MEASURES

Under the PSEA, the following special measures may be ordered against a convict in danger of escape, violent conduct, self-harm or disrupting order and security that cannot be otherwise eliminated: 1) seizure and temporary confiscation of otherwise permitted possessions, 2) placement in a specially secured cell without dangerous implements, 3) enhanced supervision, 4) isolation, 5) testing for infectious diseases or psychoactive substances. The first two measures are imposed extremely rarely. We heard hardly any grievances about the implementation of the last one, testing for infectious diseases or psychoactive substances, although the number of those tested for psychoactive substances and punished if they tested positive is not small. This is why we will here devote attention only to the measures of placement under enhanced supervision and isolation. During our visits, we have on quite a few occasions noticed that the decisions on placement under enhanced supervision or isolation are poorly reasoned in writing. Some, for instance, merely state that the measure is imposed against a convict “due to the assessment that he poses a risk to security in the institution” and because “his presence among other convicts may result in the disruption of the house rules and incidents”, without specifying the grounds on which such an assessment was made.³² Whenever we broached these grievances with the staff, we were always provided with explanations, which mostly appeared reasonable. The question arises why these reasons are not specified in the decisions on the imposition of the special measures. We see absolutely no reason why this practice cannot be improved by including elaborate reasonings in decisions on the imposition of special measures. The measure of placement under enhanced supervision is pronounced very often and nearly every penitentiary has a so-called enhanced supervision ward, used to hold violent, disruptive or offending convicts posing a threat to other inmates, and, on occasion, like in the Valjevo JPI for instance, to place convicts who

32 See, e.g. III.2.2.

should be afforded some form of protection from other hostile inmates who may hurt them.³³ Unfortunately, some of the cells used for enhanced supervision, like the ones in the Pančevo District Prison, are very small, or are decrepit, like the ones in e.g. the Valjevo JPI. Furthermore, some penitentiaries, including the Pančevo and Valjevo ones, do not provide the convicts under enhanced supervision with an opportunity to engage in purposeful activities and they spend their days in boredom, mostly lying on their beds.

33 More in III.4.2.

7. SEARCH

Hardly any of the convicts we talked to complained about how the staff conducted searches of the inmates, premises and packages. Nearly all penitentiaries have hired women guards in the last few years and in principle ensure that an inmate is searched by a guard of the same sex. The penitentiaries we have visited in the last year extremely rarely perform body cavity searches, only if there is reasonable suspicion that a person deprived of liberty has concealed within his or her body a prohibited object. Such searches are commendably conducted only by medical staff.

The cells are searched periodically, as a rule in the presence of an inmate living in the cell, who monitors the search. We heard no allegations that any prohibited objects had been planted on inmates to get them punished. Guards have on occasion found objects that can be used to inflict life-threatening injuries, most often in high security wards in larger penitentiaries or in establishments housing convicts found guilty of grave crimes.

Packages for inmates are searched in the presence of the family member or friend who brought the package. During our visit to the Sremska Mitrovica penitentiary, we were told about the problems arising with respect to the distribution of the medications that are not on the so-called “positive” list of free medications and which the inmates’ families or friends send them in packages. Namely, these medications are first sent to the health care unit for inspection and then on to the convicts. The convicts allege that this procedure can last over a week and that they are sometimes left without their medications. This problem should not be difficult to resolve. If it is impossible to perform checks of the delivered medications sooner, the prisoners should be alerted to the possibility that the procedure may take a while and they take that into account when they order the medications.

8. ACCOMMODATION AND OVERCROWDEDNESS

Apart from lack of funds, overcrowdedness remains the main problem of penal institutions in Serbia. Article 67 of the PSEA lays down the following requirements to be fulfilled by facilities in which persons deprived of liberty are held:

“Premises where convicts live and work shall be clean, dry, ventilated, heated and sufficiently lit, both by natural and artificial lighting, enabling them to read and work without injury to their eyesight. The dormitory cells must be spacious enough to allow minimum eight cubic metres of space and four square metres per convict.

The premises must have adequate sanitary facilities and other means for personal hygiene.

Every convict is entitled to a separate bed.”

The provisions in this Article uphold the generally accepted CPT standard, under which every inmate in a multi-occupancy cell needs to be provided with four square metres of space. The CPT standard under which an inmate in a solitary confinement or individual cell must be provided with six square metres of space has not been specified in Serbian law but is fulfilled in most establishments. If the national legislation were strictly enforced, Serbian penitentiaries would not accommodate more than 7000 inmates at any one time. Slightly over 11,000 people were held in them in the past year. Overcrowdedness is still the most pronounced in the remand wards, some of which do not have enough beds, wherefore the remand prisoners are forced to sleep on mattresses laid down on the floor. Of the establishments we visited in the past year, the Sremska Mitrovica Correctional Institution was the most overcrowded – it held 2122 persons deprived of liberty at the time of our visit, or 700 more than its optimum capacity. This is why the penitentiary converted the premises not initially designated for the accommodation of inmates into cells; the living conditions in them are extremely poor and lack adequate hygiene

facilities. Even the recently built or renovated pavilions do not satisfy all the requirements, because they have nearly 30% more beds than initially envisaged. The conditions in the older buildings, initially built to serve as prisons, like Pavilion 5 within the medium security ward, the minimum security ward building and several facilities within the maximum security ward, are extremely poor as well. The cells in this establishment, used to keep misdemeanour prisoners, including, frequently, foreign nationals serving time for illegally crossing the border, and for police custody, are also overcrowded. All the establishment units have a very hard time fulfilling their duties due to overcrowdedness and it is truly necessary to reduce the number of inmates in this penitentiary. Overcrowdedness has impacted on all aspects of work in this institution, from the preparation and serving of food, the difficulties the health care and counsellors units have been experiencing, to the great difficulties faced by the guards' unit, which has a very hard time ensuring that all remand and convicted prisoners are transported to their trials.³⁴ The Pančevo District Prison is also overcrowded. At the time of our visit (December 2010), it had nearly twice as many number of inmates than it should under the law. It is practically impossible to expand its capacities, particularly those of the main building in which most of the inmates are kept; this building is in the heart of town, in the pedestrian area, and is surrounded by other buildings. The other establishments we visited in the past year did not face such huge problems with overcrowdedness, but the state of some of the facilities in which persons deprived of liberty are held is extremely poor. For instance, the high security ward in the Zaječar District Prison faces grave ventilation problems and is extremely stuffy. To make things worse, the inmates are allowed to smoke even in the cells, making life for the non-smokers in them almost intolerable. The administration commendably designated one day room for non-smokers in between our two visits (we paid our first visit in September 2009 and our second visit in June 2011), but has failed to eliminate the problem. The ventilation project designed a long time ago has not been implemented yet due to lack of funding. The facilities and rooms occupied by the Kruševac JCI wards are also quite dilapidated. Several buildings are in need of renovation. Furthermore, the level of hygiene could be improved, notably in the high security ward,

³⁴ See III.7 for a detailed report on the situation in the Sremska Mitrovica Correctional Institution.

especially in the section used for the segregation of wards. The Valjevo JPI ward, in which wards placed under enhanced supervision or solitary confinement are held, is also in need of renovation. Notwithstanding the all-round financial difficulties, some of the establishments covered in this Report, such as the Vranje and Smederevo District Prisons, have succeeded in maintaining the facilities in very good condition. The conditions in the Negotin District Prison and the Belgrade Correctional Institution – Padinska Skela are also quite good.

The recent renovation of a number of penitentiaries has led to a reduction of large dormitory-cells occupied by large numbers of inmates. The Sremska Mitrovica Correctional Institution used to have the largest dormitory-cells, each shared by 80-90 convicts. These dormitories no longer exist, but this establishment still has two large dormitory-cells in the medium security ward, with fifty beds each. The state of these dormitories is not very good, but what is worse, they are located in an extremely dilapidated building, in which the bathrooms are in extremely poor shape, while its basement is often flooded by underground water (that was the case during our visit in May 2011) and emanates damp and unpleasant odours. Fortunately, the security risks usually inherent to such large dormitory-cells are not so great in this ward, because the cells are occupied mostly by middle-aged and elderly convicts who are not violence prone.

The facilities in which persons deprived of liberty spend their time in all the establishments we visited in the last year have direct access to natural light and fresh air (with the exception of the Zaječar District Prison high security ward, which can be aired only to an extent because the windows can be opened by only 5 cm. Therefore, the Belgrade and Kruševac District Prisons, which we wrote about in our previous Report, are the only penal institutions the cells of which lack direct access to natural light and fresh air.³⁵

Although the Rulebook on House Rules that come into effect back in 2006 expressly prohibits smoking in cells, common rooms, cafeterias and work areas at risk of fire³⁶ i.e. allows smoking only in areas designated for smoking, many of the establishments have been tolerating smoking elsewhere, even in the cells. During our visits, we often saw smokers and

35 See *Treatment of Persons Deprived of Liberty* I, BCHR, 2010, II.14.1. and II.18.1.

36 The prohibition in Article 26 is included in the Rulebook on House Rules of Correctional Institutions and District Prisons that came into force in 2010.

non-smokers spending all their time together. Tolerance of smoking is usually explained by the fact that most inmates are smokers which is, unfortunately, true) and that banning smoking could make them nervous and thus lead to tensions. It is difficult to assess how well-founded this assumption is, but there is no doubt that staying in a room full of smoke is extremely unhealthy for everyone, including smokers. The fact that nearly all the penal institutions are overcrowded and lack enough rooms they could designate as smoking areas exacerbates the implementation of the prohibition of smoking. The Protector of Citizens on 31 December 2009 issued a recommendation to the Penal Sanctions Enforcement Directorate to separate inmates who smoke from those who do not. He underlined that “accommodating together convicts and remand prisoners who smoke with those who do not greatly compromises the health of the non-smokers, particularly given the overcrowdedness of the cells, which are mostly unventilated and suffer from poor access to fresh air” whereby the right of every person to the protection of his physical and mental health enshrined by the Constitution is violated.³⁷ We noted that most of the establishments, which were able to, acted in accordance with this recommendation and designated one or more rooms for the smokers. However, a large number of penitentiaries are unable to set aside such premises, particularly in the remand wards, and the inmates as a rule smoke in them.

All the establishments we visited provided the inmates with access to potable water, toilets and showers. None of them use slop buckets instead of toilets. In establishments in which the cells do not have their own toilets, the cell doors are not locked and the convicts can use the toilets on the floor. The hygiene of the sanitary facilities is rarely satisfactory, mostly due to overcrowdedness, outdated installations and the damp, although, in some cases it can be attributed also to negligence. Users of toilets in some establishments, mostly those in older buildings, are not afforded privacy (the toilets are usually not fully partitioned and the inmates can see the persons using them).³⁸ The penitentiaries are equipped with squat pans rather than toilet bowls; this arrangement causes major problems for some convicts, particularly elderly ones. Under the Rulebook on House Rules in Correctional Institutions and District Prisons, convicts must be provided with the opportunity to bathe in warm water at least twice

37 See www.ombudsman.rs

38 European Prison Rules, Rule 19.3: “prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy”.

a week, while those who work must be afforded this opportunity every day, in conditions ensuring their privacy,³⁹ while the Rulebook on House Rules in Remand Wards stipulates that the inmates shall bathe at least once a week,⁴⁰ This is not in accordance with European Prison Rules, under which inmates must have the opportunity to shower or bathe at least twice a week.⁴¹ Remand prisoners are, however, in practice allowed to bathe at least twice a week, just like the convicts.

*Strategy of the Government of the Republic of Serbia to Reduce the Overcrowdedness of Penitentiaries in the 2010-2015 Period.*⁴² – The Serbian Government on 22 July 2010 adopted its Strategy to Reduce the Overcrowdedness of the Penitentiaries in the 2010–2015 Period. The Strategy, the implementation of which necessitates the adoption of an action plan, is to 1) improve the status of convicts, remand prisoners and other persons deprived of liberty and the realisation of their rights; 2) humanise the penal sanctions enforcement system and ensure a more comprehensive implementation of the relevant international standards; 3) ensure feedback on the effectiveness of the application of criminal law provisions related to the enforcement of penal sanctions with the aim of improving the courts’ penal policies and fundamental criminal law and political commitments; 4) increase the effectiveness of the Penal Sanctions Enforcement Directorate, the Justice Ministry administration authority charged with implementing, organising and supervising the enforcement of penal sanctions; 5) reduce and redistribute budgetary funds allocated for the enforcement of penal sanctions; 6) enhance the security of all members of society.

The activities to be undertaken during the implementation of the Strategy will focus on: 1) alternative sanctions and measures; 2) release on parole and parole; 3) introduction of the penal judge institute; 4) parole and probation services; 5) increase of the prison accommodation capacities and improvement of conditions in the penitentiaries; 6)

39 Art. 24(3).

40 Art. 18(2).

41 European Prison Rules, Rule 19.4: “Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene”.

42 *Sl. glasnik RS* 53/2010.

raising the professional capacities of the Directorate staff; 7) pardons; 8) establishment of a single information system

The Strategy, *inter alia*, envisages the broader application of alternative sanctions and measures by expanding grounds for bail and improving the electronic monitoring system, which is to enable the application of the measure restricting the movements of a felon to his or her home or town in lieu of remand in custody. The Strategy envisages house arrest as an independent penal sanction, an increase in the number of community service hours the convict may work, the introduction of simplified forms of criminal proceedings in which alternative sanctions are pronounced. The Strategy envisages the introduction of penal judges, who will have considerable powers in enforcing criminal sanctions and be, *inter alia*, charged with monitoring the implementation of house arrest.

The Strategy also lays down the measures facilitating the implementation of release on parole and parole measures. The penal judges are to play an important role in the implementation of these measures and will be entrusted with reviewing parole petitions and paroling prisoners *ex officio*.

The Strategy envisages the adoption of a law regulating the enforcement of various alternative sanctions and measures within the remit of the probation service. The probation service will be charged with various duties assisting the courts in rendering decisions on accused and convicted persons.

The Strategy also envisages an increase in prison capacities. In the short term, a maximum security correctional institution accommodating 450 convicts will open at Belgrade (Padinska Skela). In the medium term, the existing capacities will be reconstructed and, in the long term, new penitentiaries will be built.

The Strategy envisages raising the professional capacities of the Penal Sanctions Enforcement Directorate, the pardon of specific categories of convicts, which is to help reduce the overcrowdedness in the penitentiaries, and the introduction of a single information system linking up the police, the judiciary and the Penal Sanctions Enforcement Directorate.

It needs to be noted that practice has shown that the construction of new prisons as the only measure for combatting overcrowdedness has not yielded good results.⁴³ This measure, aimed at increasing the accommodation

43 In paragraph 14 of its 7th General Report the CPT states that a number of European States had embarked on extensive programmes of prison building,

capacities, should be accompanied by a series of other measures focusing on the reduction of the number of inmates. The latter include but are not limited to doing away with the practice of frequently and unnecessarily ordering pre-trial detention, the greater application of alternative sanctions and the more effective implementation of conditional release by introducing a supervision programme and support to paroled inmates to reduce recidivism.⁴⁴ The last measure would be particularly sensible given that recurrent offenders account for most persons deprived of liberty in Serbia.

The measures outlined in the Strategy can be qualified as good and reasonable and sure to address overcrowdedness. It remains to be seen how seriously the Government and judiciary authorities will embark on their implementation. The problem of overcrowdedness will not be eliminated unless other measures, such as general crime prevention measures and combating drug addiction, also yield results.

only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates.

44 See CoE Committee of Ministers Recommendations (99) 22 and (2003)22.

9. REGIME

The entire penal sanctions enforcement system unfortunately does not provide persons deprived of liberty with many opportunities to work. Furthermore, most penitentiaries provide little opportunity for recreational or other purposeful activities, wherefore most prisoners spend their time in their cells or the day rooms, mostly watching TV and languishing. This particularly holds true for high security and remand wards. Remand prisoners are actually the worst off. As a rule, there are no day rooms in the remand wards, due to lack of space and the necessity to keep remanded accomplices apart, and the remand prisoners are forced to spend their days cooped up in their overcrowded cells. Remand prisoners do not work, although they are allowed to under the regulations.

Due to overcrowdedness, lack of guards and/or lack of exercise yards, most penitentiaries are unable to provide all inmates with the legally guaranteed right to spend at least two hours a day outdoors. Remand prisoners are the worst off with respect to this aspect of life in a penal institution as well; the administrations have a hard time providing them with the chance of spending even one hour a day outside, the minimum laid down in the European Prison Rules (Rule 27.1) and CPT standards. Convicted prisoners are better off in most establishments, particularly those in medium and minimum security wards; they usually spend much more than two hours a day in fresh air. Furthermore, exercise yards of these wards are ordinarily larger than those of the high security wards. Smaller establishments, particularly those in the heart of town and housed in older buildings, provide hardly any recreational opportunities. At best, they have several exercise devices in the exercise yards and a small gym (e.g. the Vranje District Prison). Opportunities for recreation are much better in penitentiaries out of town, such as the Sremska Mitrovica and Belgrade-Padinska Skela Correctional Institutions and the Valjevo and Kruševac juvenile establishments and the prisoners make the most of the opportunity to take part in sports activities.

As mentioned in the introduction, penal institutions do not afford the convicts enough opportunity to work, with the exception of

minimum security establishments and establishments with minimum and, to a somewhat lesser extent, medium security wards that have farms, production facilities or workshops. Unfortunately, the number of repeat offenders, who are referred to high security wards, has been on the rise in the past few years; they have even fewer chances of working, because only large establishments, like the one in Sremska Mitrovica, are able to employ convicts in the high security ward on jobs other than maintaining hygiene or preparing food. The convicts we talked to in this establishment said that they had fewer and fewer opportunities to work and that the number of unemployed prisoners was growing although they wanted to work. A lot of attention needs to be devoted to the issue of inmate employment, because it is difficult to expect that people spending their days languishing will make any headway in resocialisation. Work, more precisely work therapy, is extremely beneficial to convicts suffering from addiction diseases, who, unfortunately, account for a large share of the inmate population.

The fact that incarcerated juveniles and young adults are not provided with any opportunity to engage in purposeful activities is particularly concerning. Unfortunately, there are groups of juveniles in both the Kruševac JCI and the Valjevo JPI who have very few chances to partake in the activities organised by the establishments. The Kruševac JCI, namely, has a high security ward where 25 wards were held at the time of our visit; their daily regime of activities greatly differs from the one applied in the rest of the establishment. First of all, these wards have hardly any school classes, because the teachers drop by the high security ward occasionally and do not stay long there. Second, they claim they spend much less time outdoors than stipulated by the law, although this ward has a separate exercise yard with a field; they say they spend their days in two separate day rooms in which they only have a TV set and a hi-fi (one of the TV sets was broken at the time of our visit). A similar regime is applied in the enhanced supervision department in the Valjevo JPI. The inmates kept in this separate department also do not take part in the activities organised for other convicts and they have no opportunities to engage in recreational or other purposeful activities in that section of the establishment.⁴⁵

45 More on the treatment of persons deprived of liberty in these two institutions in III.2.2 and III.4.2.

Smaller establishments (district prisons) as a rule do not conduct educational programmes because they hold inmates convicted to very short prison sentences. The administrations usually allow prisoners who wish to continue or begin their secondary or university schooling to leave the establishment and take their exams. The juvenile penitentiaries, as well as the Sremska Mitrovica Correctional Institution, run educational programmes. The wards in the Kruševac JCI complained that the certificates they were issued by the JCI clearly indicated where they had earned them and that they had problems finding a job upon release.

10. CONTACT WITH THE OUTSIDE WORLD

The PSEA devotes a lot of attention to the inmates' contacts with the outside world: it guarantees and regulates the right to correspondence (Art. 75), the right to telephone calls (Art. 76), visitation rights (Art. 78) and the right to spend time in a separate room with their spouses, children or other loved ones (Art. 82). It also specifies that convicts may under specific circumstances be granted privileges, including visitation rights outside the establishment, the right to go to town, the right to visit their families and relatives on weekends and holidays, the right to 7-day leaves and the right to spend their annual leaves outside the establishment (Art. 115(1)). The Rulebook on House Rules in Correctional Institutions and District Prisons regulates the exercise of these rights in greater detail and guarantees inmates also the right to information, laying down that a convict may obtain books, magazines and other media issued or produced in the country or abroad (Art. 43(1)). All these provisions are fully in accordance with the CPT standards, but we wish to draw attention to a PSEA provision bringing into question the exercise of the right to contacts with the outside world. Namely, Article 81(2) of the PSEA specifies that convicts under solitary confinement are not entitled to visits with the exception of visits by their defence counsels or future or current legal representatives. We are of the view that this provision should be deleted because there are no grounds for depriving inmates in solitary confinement of visitation rights. The CPT, which attaches a lot of importance to prisoners' contacts with the outside world, highlights that any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources.⁴⁶ The very fact that an inmate was punished by the disciplinary measure of solitary confinement does not constitute a security concern. Nor does it bear any connection to considerations linked to available resources, wherefore the conclusion can be drawn that the CPT does not consider solitary confinement as sufficient grounds for denial of

46 ^{2nd} General Report [CPT/Inf (92) 3], paragraph 51.

visitation rights. This is why we are of the view that this provision of the PSEA needs to be amended and that convicts should be allowed to exercise their right to visits during solitary confinement as well. In the Kruševac JCI, we noted a practice obviously inspired by this provision, which is not legally grounded in case of juveniles. This establishment practices denying visits to juveniles punished by the disciplinary measure of segregation (the strictest measure that may be imposed on a juvenile, and, therefore, in a way, an equivalent of solitary confinement) although there are no legal grounds for such denials. As opposed to the PSEA, which expressly prohibits visits to prisoners in solitary confinement, the Rulebook on House Rules in the Juvenile Correctional Institution does not prohibit visits to segregated juveniles. Under the Rulebook, the JCI governor may prohibit visits by persons who may badly influence a juvenile at the proposal of the juvenile's group counsellor (Art. 26(4)); under Art. 29(2), a juvenile punished by segregation is not entitled to a visit by his/her spouse or common-law partner in a separate room during segregation. Articles 71-79 of the Rulebook, which govern the enforcement of the disciplinary measure of segregation, make no mention of the prohibition of visits. This Rulebook, therefore, does not comprise an explicit provision prohibiting visits to juveniles during segregation, except visits by their spouses or common-law partners. Surely the authors of the Rulebook would have clearly prohibited visitation rights to segregated juveniles had they wanted to. We shall recall again the above-mentioned views of the CPT on the inmates' exercise of the right to contact with the outside world and this time emphasise the importance of such contacts for juveniles:

“The CPT attaches considerable importance to the maintenance of good contact with the outside world for all persons deprived of their liberty. The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources.

The active promotion of such contacts can be especially beneficial for juveniles deprived of their liberty, many of whom may have behavioural problems related to emotional deprivation or a lack of social skills. The CPT also wishes to stress that a juvenile's contact with the outside world should never be restricted or denied as a disciplinary measure.”⁴⁷

We are therefore of the view that the current practice in the Kruševac JCI is not only not founded on the law, but unsuitable as well. What is

47 9th *General Report of the CPT [CPT/Inf (99) 12]*, paragraph 34.

particularly unfortunate, according to the wards, is that visits are denied to parents who travelled to Kruševac, unaware that their child has been punished by segregation. Other forms of contact with the outside world, such as telephone calls, should not be denied juveniles in segregation either (the CPT notes above that a juvenile's contact with the outside world should never be restricted or denied as a disciplinary measure).

With the exception of the Kruševac JCI, we did not hear complaints from any of the convicts we interviewed in any other establishments we visited in the past year that their contacts with the outside world are in any way denied by the staff. They did, however, object about the way the visits were organised. For instance, the convicts in the Sremska Mitrovica Correctional Institution drew our attention to the fact that their visitors sometimes had to wait for hours in front of the establishment due to the poorly organised visiting hours and crowds⁴⁸. We also heard grievances about the duration of the visits, which are sometimes shorter than they should be for objective reasons (e.g. in the Pančevo and Prokuplje District Prisons). Some smaller penitentiaries, like the latter two, also lack adequate visit rooms and the inmates meet up with their families and friends in the hallways or pass-through rooms; they sometimes have no chairs to sit on and have to stand throughout the visit. Only a few establishments, larger ones as a rule, have designated rooms where prisoners can spend time with spouses, children or other loved ones in privacy.

We did not hear any serious grievances about the exercise of the rights to correspondence and telephoning. Some of the convicts we spoke to said they suspected that the staff was reading their letters although this is prohibited, but we were unable to verify these allegations during our visits.

None of the establishments prohibit the inmates from watching TV or listening to the radio. Most penitentiaries are well-equipped with TV sets.

Special regulations apply to the remand prisoners' contacts with the outside world. The Rulebook on House Rules in Remand Wards lays down a number of restrictions aimed at pre-empting any hindrance to court proceedings. We cannot elaborate on the details of the remand prisoners' rights to visits, a telephone or written correspondence because we were unable to interview them during our visits. We can only note that we noticed on our tours of the establishments that the remand wards were better equipped with TV sets than the wards in which convicts are held.

48 More in III.7.2.

11. SPECIAL CATEGORIES OF INMATES

Women. – Women in Serbia serve their prison sentences in only one establishment: the Correctional Institution for Women in Požarevac. We had not visited this establishment again in the past year and will therefore limit our observations to treatment of female inmates in other establishments where they are remanded and to the treatment of the female wards in the Kruševac JCI.

Women are separated from men in all penal institutions, no matter how overcrowded they are. The establishment administrations and staff are aware of women's specific needs and ordinarily place them in the best furnished cells with the best conditions for maintaining personal hygiene. As we were unable to talk to remand prisoners during our visit, we were not able to learn much about how women in remand are treated. According to the information we received in several health care units, it may be concluded that there are rarely problems in supplying women with the necessary personal hygiene items, such as sanitary towels and tampons.⁴⁹ The female wards in the Kruševac JCI are also held in premises which are in somewhat better condition than the ones in which the male wards are held. The female wards are separated from the male wards only at night; they sleep in separate buildings housing the men's and women's dormitories, but they are free to move around the penitentiary compound and have contacts with the male wards during the day. Unfortunately, many of the female wards had spent their lives in orphanages (which look after orphans until they turn 18) before referral to this JCI and they find themselves literally on the street upon release. This is why many of them resort to prostitution, and, as a rule, start using drugs, and often contract Hepatitis C. This is, of course, a broader social problem and necessitates the engagement of numerous stakeholders, not only of an institution like the JCI.

49 To recall, the CPT underlines that it is of particular importance that the penitentiaries ensure ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items, such as sanitary towels and tampons. The failure to provide such basic necessities can amount, in itself, to degrading treatment (CPT General Report, 1999).

The number of women guards in penal institutions has been rising in the recent years and there are few (if any) establishments the guard units of which are staffed only by men. This commendable change helps avoid situations in which men search women, which may amount to ill-treatment under specific conditions, and contributes to improving the climate in the establishment and the prevention of ill-treatment.⁵⁰

Juveniles. – In the past year, we visited the only two penitentiaries for juvenile offenders in Serbia, the Juvenile Correctional Institution in Kruševac and the Juvenile Penal Institution in Valjevo. The conditions in these establishments and the treatment of persons deprived of liberty there are elaborated in greater detail in Part III of this Report (Chapters III.2 and III.4), and we shall only mention here that juveniles are held on remand in other penitentiaries in Serbia as well. They, as a rule, cannot be segregated from adult inmates due to the overcrowdedness of the establishments. The Protector of Citizens issued a recommendation on this issue on 30 December 2010, suggesting to the two establishments and the Penal Sanctions Enforcement Directorate to place juvenile remand prisoners with adults only with the consent of the juvenile judge, as stipulated by the national legislation.⁵¹

Persons with Disabilities. – Penal institutions in Serbia are generally not adjusted to the needs of persons with disabilities. They face various difficulties, such as the lack of ramps. The toilets and shower-rooms are not adjusted to their needs in the least (there are no toilet bowls in the toilets, only urinals and squat pan toilets, which pose problems not only for persons with disabilities but for elderly and weak inmates as well). Furthermore, the lives of inmates with disabilities are exacerbated by the lack of medical staff in nearly all the establishments, or the fact they are not on duty around the clock and thus able to provide them with medical assistance whenever they need it, so that they are in many ways forced to rely on the help of their cellmates, which is regrettable.⁵²

50 The CPT is of the view that mixed gender staffing also allows for appropriate staff deployment when carrying out gender sensitive tasks, such as searches (CPT General Report, 1999).

51 The recommendation is available in Serbian at <http://www.ombudsman.rs/index.php/lang-sr/misljenja-preporuke-i-stavovi/1231-2010-12-31-10-47-54>.

52 The European Court of Human Rights judgment in the case of *Engel v. Hungary* (App. No. 46857/06) is interesting in this respect. A convict, paralysed from

Foreign Nationals. – Foreign nationals convicted to imprisonment serve their time in the Sremska Mitrovica Correctional Institution, in the high security ward. They are not separated from the other convicts and we did not hear that they were being discriminated against or privileged in any way. Foreign inmates, of course, have greater difficulty maintaining contacts with and, notably being visited by their families, who live far away. The establishment should thus allow their visitors to stay longer. The CPT also issued a recommendation to that effect:

“The CPT wishes to emphasise in this context the need for some flexibility as regards the application of rules on visits and telephone contacts vis-à-vis prisoners whose families live far away (thereby rendering regular visits impracticable). For example, such prisoners could be allowed to accumulate visiting time and/or be offered improved possibilities for telephone contacts with their families.”⁵³

Most foreign nationals in the Sremska Mitrovica Correctional Institution, as well the other establishments where they are remanded, come from the neighbouring states and do not need an interpreter to communicate (nationals of Bosnia-Herzegovina, Montenegro and Croatia), but there are also foreign inmates who do not understand Serbian. Most of them are usually serving misdemeanour sentences for having illegally crossed the border. Many are nationals of faraway countries (such as Afghanistan, Somalia or Iraq) and speak a language spoken by rarely anyone in Serbia, particularly in small towns, which may give rise to problems if these remand prisoners do not speak English.

We did not hear of any ethnically motivated incidents involving foreign nationals in any of the establishments.

Persons in Police Custody. – Penitentiaries in Serbia still accommodate people under so-called police custody (custody of persons the police deprived of liberty pending a court decision on remand) although the PSEA does not provide for this possibility. The reason for this lies in the

the waist down, was incarcerated in a prison in which he was unable to wash himself, while the prison staff did not concern itself either with this problem or with the change of diapers he used, so that he fully depended on the good will of his cellmates when it came to satisfying these needs. The Court qualified such treatment as unacceptable (paragraph 25) and found Hungary in violation of Article 3 of the ECHR, i.e. of violating the prohibition of torture and inhuman or degrading treatment on this and other counts.

53 *2nd General Report [CPT/Inf (92) 3]*, paragraph 51.4.

lack of adequate premises and lack of facilities for preparing meals in the police stations. Persons in police custody were until recently guarded by the prison custodial staff and the prison medical staff provided them with health care. This is the best option in terms of preventing ill-treatment, because, as a rule, ill-treatment usually occurs in the first few hours after the deprivation of liberty, while the person is still in the hands of the police. The practice changed in 2009 and the penitentiaries now only provide the persons in police custody with accommodation and food, and only in extraordinary circumstances, in emergencies, with health care (on condition that the medical staff is in house at the time), while the police are fully responsible for guarding them. This simplifies establishing accountability for any ill-treatment, because it is clear that the person has been in the hands of the police from the moment s/he was deprived of liberty and the police are thus held accountable for any ill-treatment, even if it took place in the penitentiary. The police, thus, can in no event lay the blame for any ill-treatment on the prison staff. While this organisation of police custody is propitious for the prison administration and staff, it is probably also not less favorable for the persons deprived of liberty as well since it is far less possible that police officers will resort to some form of ill-treatment while being surrounded by prison staff and covered with video surveillance.

In most establishments, the police custody cells are nearly identical to the ones in the remand wards. They are not used for interrogation. The establishments provide the food, while, as noted, urgent medical assistance is provided by the civilian health institutions, with the exception of emergency interventions that cannot wait for the paramedics or a transfer to a hospital. In such cases, the prison health staff, if on duty, provides the person with medical assistance.

12. HEALTH CARE

There have been no changes to the legislation impacting on the inmates' rights to health care or the way the work of penitentiary health care units has been organised. This is why we will give a brief explanation of how the health care units in the penal institutions operate, both those we visited in the past year and the ones we have visited since May 2009, when the implementation of this project began.

Lack of Staff. – All penitentiaries we visited have health care units, although some of them are staffed by only one medical technician. The organisational structure and staffing plans of some penal institutions do not envisage the employment of a full-time doctor. Many of those that do would benefit from recruiting more full-time doctors. Establishments without medical staff, i.e. doctors, on duty around the clock usually call the local paramedics in emergencies. In some establishments, the doctors are on call when they are not on duty and come to attend to patients out of hours as well.

There are numerous reasons why these establishments lack health staff. The first is not specific just to Serbia – doctors and other medical staff working in prisons has much heavier workloads, which may involve duties posing risks to their safety and security. In addition, doctors and other medical staff, like other people, may be prejudiced against working with incarcerated persons. Second, salaries of prison health staff are lower than those of their colleagues in state or private health institutions. Third, penitentiary health units are within the remit of the Justice Ministry, notably the Penal Sanctions Enforcement Directorate, rather than the Health Ministry, and the medical staff employed in prisons in a way distances itself from its colleagues, because its opportunities for professional advancement, specialisation and promotion are generally extremely limited. Moving the prison health services out of the remit of the Justice Ministry may positively reflect on both the medical staff and the inmates, as it would ensure the independence of doctors, crucial

for establishing doctor-patient confidentiality and for preventing and uncovering ill-treatment

Examinations on admission. – The PSEA lays down that a convict shall first be identified, medically examined and have a personal medical file opened on admission.⁵⁴ The Rulebook on House Rules stipulates that the examination must be conducted within 24 hours from admission. The establishments do not have a uniform practice with respect to this obligation. Firstly, not all establishments have the inmates examined within 24 hours from admission. Some of them do not have a full-time doctor on staff or round the clock medical staff and the examinations are conducted as soon as the doctor comes in for his/her regular visit i.e. some inmates may have to wait several days before they are examined. This is most often the case if the inmate is admitted on a Friday afternoon or during the weekend, when the doctor is off. Some establishments in such situations first take the new inmates to the local health institutions for an examination and then admit them. Others call up the doctor or medical technician and ask him or her to come in and examine the inmate. Establishments manned round the clock by medical staff have the new convicts examined within 24 hours from admission, as provided for by the law. The examinations on admission are conducted by the doctor or a qualified medical technician. The examinations differ amongst the establishments. Some conduct thorough examinations, others do not, but it may be concluded that the examination usually comprises a short chat with the inmate who then reports his/her health problems (if any), tells the doctor if s/he is undergoing or has been prescribed a therapy, which illnesses s/he had had, etc. If necessary, the convict is subjected to a physical examination. The convict's personal medical file is opened during the examination and all the available information on the convict's health is entered in it. Only one establishment we visited (the Kruševac District Prison) did not keep personal medical files of its prisoners.

Access to a doctor. – Under the Rulebook on House Rules in Correctional Institutions and District Prisons, convicts may seek a doctor's appointment with the competent guard every day; the guard shall record their request in the appointment book in their presence and escort them to the doctor when the health unit is open, the following workday

54 Art. 60(1).

at the latest. The convict does not need to specify the reason for asking to see the doctor.⁵⁵ These regulations are by and large abided by. There may be deviations with respect to the deadlines in which the examinations are conducted because some establishments do not have a doctor in house every day and on occasion the convicts have to wait longer for an examination than the Rulebook on House Rules stipulates. We did not hear of guards prioritising the requests in any of the establishments.

Under the Rulebook on House Rules in Correctional Institutions and District Prisons, every prison officer is duty-bound to alert to, seek and ensure timely professional medical assistance to a convict in an emergency.⁵⁶ In the event the doctor is not in, the medical technician assesses whether an emergency is at issue; in the absence of the latter, this assessment is made by the guards, usually in telephone consultations with the medical staff. This practice cannot be qualified as good, because the guards are not qualified to make such assessments; nor can a doctor or medical technician make a proper assessment without examining the convict seeking medical aid. This is why the paramedics should be called in whenever a convict seeks urgent medical assistance.

Examinations by specialists are conducted in the penitentiaries which provide for occasional visits by medical specialists. Inmates of penitentiaries, which have not provided for such visits, are transferred to the local civilian medical institutions where they receive specialist care. Criminal and misdemeanour convicts usually need not wait long for an examination by a specialist; such examinations are as a rule conducted as soon as the specialist is available. Convicts are referred to a specialist by the doctor, but they can also undergo such examinations at their own request with the consent of the governor.

Only a few penitentiaries have dental surgeries. With the exception of convicts in such, larger establishments, inmates in other penitentiaries are provided with dental services in state-owned, or more rarely, private dental surgeries. Some establishments provide the convicts only with tooth extraction dental services. This practice is impermissible, seriously compromises the health of the inmates and has to be discontinued

55 Article 35, paragraphs 1 and 2, Rulebook on House Rules in Correctional Institutions and District Prisons.

56 Art. 35(3), Rulebook on House Rules in Correctional Institutions and District Prisons

immediately. It is also in contravention of the PSEA, which explicitly stipulates that a convict shall have access to a dentist (Art. 102 (6)) without limiting it to tooth extraction. Under the PSEA, prisoners, who cannot receive adequate medical treatment within the institution, shall be transferred to the Special Prison Hospital or another health institution (Art. 101 (2)). Therefore, there are no legal grounds for limiting dental services to tooth extraction.

Most establishments ensure that a convict transferred to a civilian institution for an examination or treatment is accompanied by a medical technician only if the doctor assesses that such escort is necessary. Some penitentiaries make sure that every convict transferred to a civilian medical institution is accompanied by a member of the medical staff, which is definitely commendable. Unfortunately, if only one medical technician is on duty in an establishment during the day, it is very difficult, if not impossible, to ensure that s/he escorts the patient, who is being transferred, because the penitentiary would then be left without any medical staff.

Health Records. – The penitentiaries do not follow uniform procedures for keeping health records of inmates or for recording incidents and injuries sustained by the inmates. An inmate’s personal medical file is opened on admission and all available information on the inmate’s health is entered in it in most penitentiaries. The inmates take their medical files with them when they are transferred to another establishment. Some establishments, however, do not enter all health-related information about an inmate in his/her personal medical file. Namely, some keep records of examinations after the use of coercive measures in records of coercive measures, but most establishments file the doctor’s report on the examination of a convict against whom coercive measures were used only in his/her medical file, and do not forward a copy of it to the governor together with the report by the security service and the statements by the convict in question.⁵⁷ The medical files of all inmates have to comprise information on all examinations conducted during their imprisonment,

57 Under Article 130(4) of the PSEA: “A written report of the security service and reports on conducted medical examinations shall be submitted to the governor without delay. The medical report shall comprise also statements by the person against whom a coercive measure was applied about how the injuries were incurred and the doctor’s opinion on the link between the applied measure and the sustained injuries. The governor shall notify the Director of the Directorate

including examinations performed on admission and after the use of coercive measures.

Medicine Cabinet and Distribution of Medications. – In all the establishments, the medicine cabinets are under the sole supervision of the medical staff. The medications are prescribed by the doctors and prepared by the medical technicians, who also distribute them. Medications are distributed also by guards in penitentiaries with unstaffed medical units or without medical staff on duty round the clock. We were told in some establishments that they had problems in procuring the medications they needed.

Psychiatric Care. – Convicts and remand prisoners in need of institutionalised psychiatric treatment are treated in the Special Prison Hospital in Belgrade, which mostly serves as a psychiatric institution. It was designed to accommodate around 400 patients, but the number of patients has recently exceeded 700. In addition, it is seriously understaffed. It needs to be noted that the Special Prison Hospital and Belgrade District Prison are headquartered in the same building, which was designed in such a way that most of the accommodation premises do not have direct access either to natural light or fresh air.⁵⁸

Most establishments organise psychiatric examinations on a more or less regular basis. Some penitentiaries, unfortunately, are unable to ensure regular psychiatric examinations and they transfer their wards to the local health institutions for such examinations. The availability of substance abuse treatment programmes is of major importance given that many (if not most) inmates use drugs or are drug addicts. The methadone therapy can be conducted only in establishments situated in towns where the local health centres conduct this kind of therapy. This is, however, insufficient at times; some establishments allow the inmates only to continue with the methadone therapy they began before admission, but do not provide them with the possibility of commencing it. We are of the view that this practice should change and that all prisoners should be enabled to start the methadone therapy, provided, of course, that they consent to it

of the application of the coercive measure and forward him the reports within 24 hours from the time the coercive measure was applied.”

58 More on the Special Prison Hospital in *Treatment of Persons Deprived of Liberty I*, Belgrade Centre for Human Rights, 2010, II.13.

after consultations with a medical specialist. Health centres in nearly all larger towns have methadone programmes; they are, unfortunately, rarely complemented by relevant work and psychotherapy programmes. Only a few penitentiaries have staff trained to conduct such problems. In general, the medical technicians employed in establishments lack any psychiatric training.

The penitentiary staff is mostly not trained in the early detection of psychiatric disorders among inmates. The staff, who is able to recognise conduct indicative of psychiatric disorders, has, as a rule, acquired the skill through years of service rather than training. This is why the authorities need to devote particular attention to the training of all prison staff, not only the medical staff, in the early detection of psychiatric disorders.

Patient's Consent and Confidentiality. – Under the PSEA, a convict must consent to treatment; exceptionally, if the convict's refusal of treatment or food may seriously compromise his/her health or life, medical measures determined by the doctor shall be applied. An identical provision can be found in the Rulebook on House Rules in Remand Wards i.e. all persons deprived of liberty may be treated against their will only in specific situations. The PSEA expressly prohibits the forced feeding of convicts. Refusal of treatment is extremely rare in Serbian penitentiaries and patients who refuse treatment have to certify their refusal in writing. Hunger strikes are relatively frequent, but we did not hear of any attempts of forced feeding in any of the establishments.

Under the Rulebook on House Rules in Remand Wards, a remand prisoner may be examined by a doctor of his/her own choice at his/her own expense with the consent and under the supervision of the authority conducting the proceedings or under the supervision of a person designated by the authority.⁵⁹ In such cases, the examinations are as a rule conducted in the establishment and in the presence of the penitentiary doctor.

The PSEA also guarantees the privacy of medical examinations by laying down that such examinations may be conducted only in the presence of a health worker, unless otherwise required by the health worker.⁶⁰ Since May 2009, when we began implementing the project, we established that examinations were always conducted in the presence of guards in three

59 Art. 32(1), Rulebook on House Rules in Remand Wards.

60 Art. 102(4), PSEA.

establishments (the Negotin, Smederevo and Užice District Prisons).⁶¹ The Užice penitentiary allowed examinations in the absence of the guards, but only at the request of the patient, which definitely does not constitute good practice. The Smederevo District Prison in the meantime abandoned the practice and all check-ups are now conducted in the absence of non-medical staff. All examinations in the Negotin District Prison were still being conducted in the presence of the guards, at the doctor's request. Although the PSEA does allow for this, examinations should be conducted in the presence of guards only in exceptional circumstances, if there is reasonable cause to expect that the patient may injure the health worker or himself/herself. Therefore, examinations in the absence of guards should be the standard. Patient-doctor confidentiality cannot be achieved if the guards attend every examination.

Preventive Health Care. – Under the PSEA, the penitentiary doctor has a series of preventive health duties. The doctor is, *inter alia*, duty bound to control accommodation, nutrition, hygiene, sanitation and other conditions impacting on the health of the convicts and issue findings and recommendations on the quantity and quality of meals served the convicts, on how to improve the hygiene in the establishment and the convicts' hygiene, the sanitary conditions and equipment, heating, light and ventilation in premises accommodating the convicts. The governor is also duty-bound to undertake the measures proposed by the doctor without delay.⁶² In practice, however, medical technicians rather than doctors perform such checks of the living conditions, food, hygiene and other conditions in the establishment. Unfortunately, the doctors and medical technicians have very limited power to improve the conditions inmates are living in. The governors are themselves aware of the deficiencies of the accommodation and nutrition even without the doctors' opinions and recommendations, but their ability to improve anything almost always depends on the available funds. This is why the supervision conducted by the medical staff very often boils down to a mere formality.

The health staff could play a much greater role in informing inmates and prison staff about infectious diseases and diseases typical of prisons. Not too many establishments regularly distribute information on

61 See *Treatment of Persons Deprived of Liberty I*, Belgrade Centre for Human rights, 2010, I. 12.

62 Art. 103, PSEA.

contagious diseases to the inmates. Only a few penitentiaries distribute brochures on them on admission or on a regular basis. Even fewer organise health-related lectures for the inmates and prison staff.

Unfortunately, contraction of HIV or hepatitis during incarceration is not rare, particularly in larger establishments. Most non-medical staff is unsure how inmates infected by HIV or hepatitis should be treated and ought to undergo regular training to address this lack of knowledge. We did not record any instances of separating or isolating HIV positive persons, but some of them are discriminated against by other convicts or remand prisoners, usually due to lack of knowledge about how these diseases are transmitted. Educating inmates about communicable diseases would reduce the discrimination of inmates infected by HIV or hepatitis and inform the whole prison population about efficient protection measures. It needs to be underlined that many persons suffering from these diseases are unaware that they have contracted them, wherefore the administrations should constantly conduct campaigns encouraging the inmates to test themselves. The infected inmates would thus begin adequate treatment on time, while the prison staff would gain information it needs to treat these inmates adequately.

As mentioned, hardly any prison staff is trained in the early detection of psychiatric disorders among inmates. The same applies to the prison staff's competence to recognise suicide warning signs. Some staff has longstanding experience in prisons and is able to detect signs indicating that an inmate may commit suicide, but most of the medical and guard staff we talked to said that they were unable to recognise signs of suicide. There is obviously the need to train the staff in that respect.

PART III

REPORTS ON INDIVIDUAL
VISITS TO PENAL INSTITUTIONS

1. PANČEVO DISTRICT PRISON

Time of Visit: December 2010

Number of inmates at time of visit: 120 criminal and
3 misdemeanour convicts, 85 remand prisoners
(208 in total)

Gender breakdown: 8 females, 200 males

1.1. Material Conditions

The Pančevo District Prison is a medium-security establishment housing persons deprived of liberty (criminal and misdemeanour convicts and remand prisoners, hereinafter: inmates). It comprises facilities at three locations: one in the very heart of the Pančevo, one on its outskirts and one in the town of Vršac. During our visit, we toured the facilities in Pančevo – the building in the heart of the city, in the pedestrian area, and the prison farm several kilometres from the centre of the city. Around 150 inmates were held in the two facilities at the time of the visit; most of them were remand prisoners, living in the main building in the centre of the city. The whole prison is overcrowded – the administration officials told us that not more than 80 inmates should be kept at both facilities under the Penal Sanctions Enforcement Act (PSEA) provisions on living conditions in penitentiaries. Although the PSEA lays down that each inmate shall be afforded at least four square meters of living space, the administration told us that the living space of inmates in some cells does not amount even to two square metres. The overcrowdedness of the establishment is exacerbated by the fact that the police use the prison facilities to hold persons in custody.

It is practically impossible to expand the capacity of the building in the heart of Pančevo, where most of the inmates are kept: built over two hundred years ago, it has been placed under protection as cultural

heritage, has a small plot of land and is surrounded by various other buildings, which is why it would be difficult to conduct the necessary renovation required to substantially improve the living conditions in it. The building suffers from numerous shortcomings: there is only one exercise yard, in which the inmates cannot engage in any recreational activities; it lacks adequate facilities for family and attorney visits; the dormitories in which the inmates spend their time lack sunlight and they can hardly read without artificial lighting; the establishment staff also lack adequate office space. Inmates under enhanced supervision are the worst off – they are kept in an extremely small cell (around ten square metres in area) furnished with six beds, with only iron bars separating it from the hall. The living conditions in the other rooms are not much better. The cells, in which the female remand prisoners were held at the time of the visit, were in somewhat better shape than the others.

The living conditions of the inmates held at the farm are somewhat better, because they have more space and opportunity for recreation, as opposed to the inmates in the building in the city – the farm has a basketball stand, a soccer field and a gym, which was extremely cold at the time of the visit, because there is no heating in it.

1.2. Treatment of Inmates

The everyday activity schedules are quite different in the two facilities – only several of the convicts in the building in the heart of the city work, while most others are left with no opportunity to engage in purposeful activities. On the other hand, most of the inmates at the farm work. As mentioned, the building in the centre does not provide conditions for recreation; some of the inmates exercise in their dormitories, by lifting other objects at their disposal in lieu of weights. According to the administration, convicts in this building spend around one hour, while the remand prisoners spend less – around 45 minutes - a day outdoors. The convicts themselves allege that they spend less time outside. Of course, overcrowdedness is the main reason why they spend less time in open air than the law lays down (two hours a day). The problem would be partly addressed by erecting a fence and splitting the exercise yard into two. Given that convicts mostly sentenced to short imprisonment are incarcerated in this jail, they usually do not have the time to attend an education programme or job training. The jobs on offer in prison

are simple and do not require prior training. The staff assesses that one-third of the inmates use drugs or were convicted for drug production or trafficking crimes. They do not have access to the methadone therapy.

The convicts we spoke to complained the most about the work of the doctor – they think that he is incompetent and allege that he treats the patients badly; they also voiced grievances about the lack of activities and the adequate visits rooms, which is why they cannot spend as much time with their visitors as they are entitled to. They also criticised the food. The interviewed convicts did not voice serious complaints about the disciplinary proceedings; 60 such proceedings had been conducted in 2010 (until the day of the visit i.e. early December 2010). Convicts placed under enhanced supervision are delivered decisions to that effect, but, they claim, these decisions, like those on solitary confinement, lack detailed reasoning of the grounds on which they were imposed. Indeed, the decisions the interviewed convicts showed us could have been better reasoned. One of them, for instance, states that the convict is being placed under enhanced supervision “due to the assessment that he poses a risk to security in the institution and that his presence among other convicts may result in the disruption of the house rules and incidents”, but fails to list the grounds for this assessment and how precisely the convict risks to undermine security. The explanation the administration and guard staff gave us when we asked them about this decision appears reasonable, but it should also have been included in the written decision on the imposition of the measure of enhanced supervision.

No suicides have recently been committed in the prison, although two attempts were registered in the past year. There have been instances of self-harm. Inmates occasionally stage hunger strikes; they are weighed every day. They are transferred to the Special Prison Hospital if their health deteriorates to the point that they need round the clock assistance.

As a rule, juvenile remand prisoners (two at the time of our visit), are not left alone in the cells. They are usually kept in cells with inmates who are not violent or not accused of grave crimes.

1.3. Safety and Security

There have been no successful prison breaks recently. The last attempt was made by a remand prisoner, who tried to escape his guards while they were in court. Two convicts failed to return to prison at the end

of their weekend leaves in the last year. The guards say that they rarely find the inmates in possession of cell phones – they found only two, both times on remand prisoners, in the last year. The same applies to narcotics, as partly corroborated by the drug test results, which are usually negative (it needs to be noted that testing for drugs is usually performed on convicts with privileges, i.e. those allowed to leave the prison on weekends).

Physical altercations between inmates are rare. None have resulted in grave injuries recently. Criminal charges were recently filed after an inter-prisoner clash in which one inmate sustained light physical injuries. There is no strict informal hierarchy among the prisoners, although some convicts occasionally try to dominate others. As a rule, they are separated from the other inmates, placed under enhanced supervision or, if necessary, in solitary confinement. The convicts say that the guards adequately react to prevent clashes and protect them. There have been no assaults on the prison staff recently.

1.4. Health Care

The health care unit is manned by a doctor specialised in sports medicine, who is employed on a part-time basis and works on Mondays, Wednesdays and Fridays and when necessary, and a female prison guard, who is versed in the health unit administration and assists the doctor. The prison does not have a surgery or an office especially adapted for the provision of health care. The examinations are conducted in a pass-through room with two doors, which are shut if necessary, and in which only the basic physical examinations can be conducted. The health care unit has modest equipment at its disposal – a stethoscope, tensiometer, glucometer, thermometer and a weighing scale. Patients, who need to be examined by the use of other equipment or are in need of laboratory analyses, are referred to the city civilian health institutions. Given that the prison conditions do not allow for the administration of the ampoule therapy or the bandaging of the patients, these services are provided by the house-call unit of the local outpatient health clinic at the request of the prison doctor. Pill therapy is given at the prescribed times, under the supervision of the guards (to prevent abuse and trafficking of medications). At the doctor's insistence, inmates are prohibited from receiving powdered vitamins and supplements. The prison, unfortunately, does not have the facilities to provide special dietary arrangements.

All examinations are conducted in the absence of guards (if the fact that the doctor is assisted by the female prison guard is discounted). The doctor establishes the working capacity of a prisoner during his first check-up on admission. Inmates schedule their appointments with the doctor through the guards, who do not prioritise the requests. The paramedics are called in if the doctor is not on duty and an inmate is in need of an urgent examination or urgent medical assistance.

The prison does not have the facilities to provide dentistry services and inmates are taken to see a dentist outside prison at the prison's expense only if they are suffering from acute pain. They are always able to see a dentist at their own expense.

Inmates are referred for psychiatric examinations by the prison doctor and in the event they already began psychiatric treatment before incarceration. As mentioned, the methadone therapy is not available in the prison; the doctor is of the view that it is not useful. Alcohol and drug tests are performed occasionally, when there are suspicions that an inmate is abusing them.

The doctor is also charged with checking the quality of the inmates' nutrition. He says that the quality of the food is checked every day and the state of the kitchen once or twice a week. The so-called sanitary checks of the kitchen staff are conducted every six months.

1.5. Staff

The prison has 80 members of staff, most of whom are guards: 44 work in Pančevo and 15 in Vršac. The current organisational structure and staffing plan does not reflect the needs of the institution – it does not envisage the existence of a counsellors unit (which nevertheless exists and comprises five counsellors) or the employment of a legal professional. The health care unit is understaffed. Fortunately, the new organisational structure and staffing plan, which has been drafted, provides for the employment of two nurses. The understaffed guard unit puts in a lot of overtime. The prison administration and staff are of the view that the guard unit is at least 15 guards short. Given the above problems, above all the overcrowdedness, the lack of space and the age of the main building in Pančevo, it is not difficult to conclude that the vast majority of the staff is working in difficult circumstances. For instance, three counsellors have to share one office.

1.6. Recommendations

Many of the noted shortcomings cannot be eliminated. The prison itself cannot address the problems of overcrowdedness and lack of space. The only way to really resolve these and numerous other problems is to relocate the establishment to another, new prison building that would be built out of town. The existing conditions would be improved by splitting the exercise yard into two, which would enable the prisoners to engage in physical activities to a greater extent. Furthermore, one of the larger rooms could be transformed into a gym or several exercise devices could be installed in the exercise yard. Of course, every effort should be made to transfer the inmates to other, less crowded prisons. It would be extremely beneficial if a greater number of convicts were given the opportunity to work. Work therapy has proven particularly beneficial to inmates suffering from addiction diseases.

As one can conclude from the above, the problems in the work of the health care unit are not negligible. First and foremost, one room should be fully designated as a surgery and equipped accordingly. Furthermore, attention needs to be devoted to the doctor's treatment of his patients given the numerous complaints about his work (the convicts petitioned for his dismissal with the prison administration). If the new organisational structure and staffing plan is adopted, the quality of and access to health care are likely to improve considerably by the opening of the two new positions in the health care unit. It would be beneficial to provide the convicts with access to the methadone therapy, subject, of course, to their informed consent after consultations with a specialist doctor (having said that, we are aware that this also depends on the availability of this therapy in the local civilian health institutions). Furthermore, the administration should ensure regular visits by a psychiatrist and a psychologist, ensuring continuous access to their assistance, independently from the prison doctor's assessments.

2. JUVENILE CORRECTIONAL INSTITUTION IN KRUŠEVAC

Time of Visit: December 2010

Number of wards at time of visit: 200 juveniles referred to a correctional institution and 11 female convicts transferred from the Correctional Institution for Women in Požarevac (211 in total, 197 of whom were at the institution on the day of the visit)

Breakdown by wards: minimum security – 11, medium security – 161, high security – 25

Gender breakdown: 188 males, 23 females

2.1. Material Conditions

The Juvenile Correctional Institution (JCI) in Kruševac is situated at the very edge of town. There are over 30 various buildings for the accommodation, education, training and work of juveniles in the compound, taking up more than 30 hectares of land. Apart from the admission ward, the JCI has three – minimum, medium and high security - wards. Most of the juveniles have been referred to the medium security ward. The buildings in which the wards live were built after WWII. They can accommodate up to 400 people and the institution is not overcrowded. The dormitories in the whole institution are in a similar condition. Those in which the girls are accommodated are somewhat neater and cleaner. However, like the boys' dormitories, they are very modestly equipped, only with the essential furniture – beds and other basic furniture, most of which is quite worn out. The rooms used for segregation in the high security ward are in poorest shape. In general, the high security ward, which has all the features of a prison, is in the poorest condition. Apart from the dormitories, the wards in this section have access only to two

day rooms, each equipped with tables and chairs, a TV set and a hi-fi set. At the time of the visit, a TV set in one of the day rooms was not working and the young men, who spend all day in it, could only listen to the radio or music (more on the daily activities in this ward below). None of the buildings lack natural light, because they are scattered on a large plot of land on the edge of town and are not surrounded by other buildings. Some of the older buildings are damp because of the underground waters which this part of Kruševac is rife with. Most of the toilets and bathrooms are quite dilapidated and would benefit from renovation.

Given that the compound is large, there is a lot of room for the wards to exercise and engage in sports activities.

The school building is in very good shape. It is clean, well kept and spacious. The facilities in it can also be used for staging cultural events.

2.2. Treatment of Inmates

The JCI is home to juveniles between 14 and 18 years of age and young adults between 18 and 23 years of age, who have been referred to a correctional institution because they were under age when they had committed a crime (although some of the wards had committed a crime when they were already young adults). The two groups are kept separated within the institution. The adults account for nearly two-thirds of the wards, wherefore the average age of all the wards is 19. The number of wards found guilty of grave criminal offences has been on the rise in the past few years. Furthermore, the staff told us that the number of juveniles and young adults with developmental difficulties has also been increasing (there were around 30 of them at the time of the visit). Hardly any of the wards had not tried or used drugs. A substantial number of them had been living in orphanages. According to the staff, around 30% of the wards (not only those who do not have parents) never have any visitors. The guards occasionally take them along when they escort the other wards to trials, thus providing them with at least some contact with the outside world.

The ethnic breakdown of the wards is interesting. The staff says that Roma account for slightly over 40% of all the wards. The JCI counsellors say that they as a rule make greater progress in resocialisation, but that some of them try to stay as long as they can in the JCI because of the financial difficulties and lack of support they face when they are released.

Unfortunately, many of the wards, who had made good progress in the JCI, i.e. finished several grades of primary or secondary school or job training and improved their conduct, are referred directly to prison (most often to the Valjevo juvenile penitentiary) to serve their prison sentences, which they had been convicted to for a crime they had committed before referral to the JCI. The courts rarely take into account the opinions of the JCI professional staff on the juveniles' progress in resocialisation when they render sentences against them.

After spending a maximum of two months in the admission department, the wards are placed in one of the educational groups pursuant to an opinion by the expert team, comprised of a pedagogue, psychologist, sociologist and special needs educator. Fourteen such groups existed at the time of our visit. Schooling is organised for all these groups and the wards are placed in the groups on the basis of their level of education. At the time of the visit, three groups were attending classes in one of the first four grades of primary school, five groups were attending 5th-8th grade classes, four groups were attending secondary school classes, while so-called special education programmes were organised for two groups. One of the problems the wards face is that the school certificates they earn have to be stamped by the JCI, which undermines their prospects of finding a job when they leave. The institution also organises vocational job training. The residents of the high security ward, however, have fewer opportunities for schooling. They do not have regular classes (the teachers visit them on occasion and do not stay long in this ward), so that the young men kept here mostly while away their time, pent up in the two day rooms. They say that they spend much less time in open air than stipulated by the House Rules (at least two hours a day). Such treatment surely cannot positively impact on the wards, who are in need of intensive counselling and correctional treatment. The institution's staff is also aware of this, and some have suggested that the JCI close this ward. However, this has not been done mostly for security reasons (some of the juveniles in this ward are extremely violent and would pose a risk to the safety of the juveniles in the medium security ward if they were to be transferred there).

Violent conduct accounts for one of the most frequent reasons for disciplinary punishment, which is not rare (over 900 disciplinary proceedings were conducted in 2009 and 2010). Only three disciplinary measures may be pronounced in disciplinary proceedings: admonition,

suspension of a granted privilege, and segregation. The latter is practiced only in this institution and entails segregation of at least two wards in a separate room and their placement under a special regime. The wards we talked to complained a lot about the way this measure is implemented. They say that it is not implemented in accordance with the House Rules; notably, the segregated wards do not spend the prescribed amount of time in open air (two hours), the doctor, counsellor and governor do not visit them at the prescribed intervals (the doctor and counsellor should visit them at least once a day and the governor every three days). Their main grievances, however, regard the fact that the rooms are in extremely poor shape, particularly in terms of hygiene, that the bed linen is not changed and that some of them have contracted skin diseases during their stay. Another problematic aspect of this measure is that the segregated wards are not allowed visits although the House Rules do not specify as much. Under Article 26(4) of the House Rules, the governor may prohibit visits by persons badly influencing a ward at the proposal of the counsellor in charge of the ward's education group, while, under Article 29(2), a juvenile is not entitled to a visit by his/her spouse or common-law partner whilst in segregation. Articles 71–79 of the House Rules, which regulate segregation, do not comprise an explicit provision prohibiting all visits (there is only the one in Article 29 on visits by marital or extramarital partners). It can, thus, be concluded that the authors of the House Rules would have clearly prohibited all visits to segregated juveniles had they wanted to. It needs to be noted here that paragraph 95.6 of the Recommendation Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures states that “[D]isciplinary punishment shall not include a restriction on family contacts or visits unless the disciplinary offence relates to such contacts or visits. Furthermore, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which stated the following with respect to contacts of juveniles deprived of liberty with the outside world: “The CPT attaches considerable importance to the maintenance of good contact with the outside world for all persons deprived of their liberty. The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources. The active promotion of such

contacts can be especially beneficial for juveniles deprived of their liberty, many of whom may have behavioural problems related to emotional deprivation or a lack of social skills. The CPT also wishes to stress that a juvenile's contact with the outside world should never be restricted or denied as a disciplinary measure" (9th General Report on the CPT's activities [*CPT/Inf (99) 12*]). To conclude, we are of the view that the right to visits of the wards in this institution should never be limited or denied because of the disciplinary offences they committed.

When a juvenile commits a disciplinary offence and the staff assess that s/he can be influenced to improve his/her conduct without launching disciplinary proceedings against him/her, they may suspend the proceedings and impose one of the so-called alternative measures (e.g. extra monitoring duty in the compound, pavilion or culture hall, gardening or room cleaning duties, writing an essay, et al). In the event the alternative measure does not prove successful, the staff may replace it by another alternative measure or decide to resume the disciplinary proceedings.

Apart from their grievances about the segregation measure, the wards we talked to also complained about the guards' conduct. Some of them said that the guards occasionally used coercive measures without cause or in excess, instead of disciplinary measures (furthermore, they allege that the doctor often fails to conduct check-ups of wards subjected to such measures or examines them with a delay). On the other hand, the JCI's records show a steady decline in the use of measures of coercion over the past few years (120 times in 2007, 80 times in 2008, 72 times in 2009, and 40 times in 2010). The wards we talked to also complained a lot about the quality of the food and the work of the health care unit; they allege that the health care they are provided with is poor and that they are sometimes even not provided with any. They emphasised that the medical staff did not treat skin diseases adequately and mostly blamed poor hygiene for the ones they contract; notably, they alleged that the bed linen was not washed frequently enough and that the bed mattresses, pillows and covers were old and tattered. The juveniles, who had spent time in the high security ward, complained a lot about the conditions and regime in that part of the JCI. Some said that the health staff declared them fit to work although they were ill and unfit. Most of the wards we talked to claimed that the medical staff did not take their health complaints seriously or were sceptical about them.

2.3. Safety and Security

Given that the guards may use means of coercion only to prevent a juvenile from assaulting a staff member or another ward or from self-harm or in the event they cannot take the juvenile's weapon away from him in another manner, it is practically impossible to prevent the wards from escaping or leaving the grounds, which is why the JCI has faced many more absconsions than any other institution within the jurisdiction of the Penal Sanctions Enforcement Directorate. There is also more violence among the wards than among prisoners in most jails in Serbia. Furthermore, the wards sometimes use very dangerous implements in physical altercations – both the staff and the wards we talked to told us that the wards were prone to digging out the cobblestones in the yard paths and hurling them at each other. Some also harass the younger or more sensitive wards. The understaffed guards have a hard time preventing such incidents from happening. The guard unit numbered 42 at the time of the visit, although the guards themselves think that it should optimally have around 70 staff. Sometimes, the unit is so understaffed that some floors are left unguarded during the night.

According to the staff, wards have a harder time rallying in informal groups than inmates in prisons do. We were told at the time of our visit that there were two groups of wards constantly trying to impose themselves as the dominant, leading informal groups.

2.4. Health Care

The health care unit employs one full-time doctor, specialised in general medicine, seven medical technicians, a dentist, and a psychiatrist who visits the institution three times a week. The doctor is in every day from 07:00 to 14:30, while the technicians work in shifts so that the surgery is staffed twenty-four hours a day. The doctor also comes to the JCI out of hours when necessary.

The examinations are conducted in the surgery which is quite spacious and light and adequate for conducting basic physical check-ups. It is equipped only with the basic diagnostic devices: a stethoscope, a blood pressure measurement device and a weighing scale. The doctor told us that the institution was planning on buying an ECG as well. The surgery

also includes a room for the administration of the ampoule therapy and bandaging; the steriliser in it is old but still working. Next to these two rooms is the inpatient unit, comprised of two three-bed rooms. They are quite decrepit and neglected and appear inadequate for accommodating patients in need of medical supervision. The dentist's office is in better shape – it is clean, neat and light, although the dentist's equipment is quite old. The dentist fixes and extracts teeth; the wards can obtain prosthetic services at their own expense in one of the civilian dentists' surgeries. The medications are stored in a cabinet in the surgery. Only the technicians may give the patients their medications. The samples for lab analyses are taken in the JCI surgery and transported to the local health centre laboratory.

The doctor says that all the wards are subjected to a medical examination on admission, which includes tests for hepatotropic viruses and AIDS. The wards need not schedule appointments with the doctor, they just come when they feel under the weather and the doctor immediately examines them. There is rarely a need to call in the paramedics of the local health centre but the wards are frequently taken to the city health centre for specialist examinations. The comprehensive check-ups are conducted twice a year.

Female wards are also referred to the city health centre for gynaecological check-ups.

As mentioned, the psychiatrist visits the institution three times a week. The other medical staff is not trained in conducting psychotherapy programme or in recognising signs of suicide. The methadone therapy is not available at the institution. A drug prevention and treatment programme is conducted in workshops, during which the wards learn about drug addiction, factors leading to it, prevention and treatment. Wards who do well during the drug addiction treatment are granted additional minor privileges. In the event a ward, ordered mandatory psychiatric treatment for drug addiction, is admitted to the JCI, s/he is referred to a psychiatric institution.

2.5. Staff

The counsellors unit is the most important unit working with the wards and it takes the crucial decisions on the treatment programme that will be applied to each individual ward. This unit has slightly over

50 members of staff, nearly three-quarters of whom are women. Around 20 teachers also work in the school. As mentioned, the guard unit is understaffed. Furthermore, some of the staff in this unit have been formally employed as so-called programme assistants and thus do not have the powers guards do. Therefore, they are at risk of violating the regulations while they perform their everyday duties (for instance, they may be forced to use means of coercion to protect themselves or the wards, although they are not authorised to). Given that they are understaffed, the guards in the JCI put in a lot of overtime, *inter alia*, because they need to escort the wards to trials all across Serbia.

2.6. Recommendations

Fortunately, the institution does not face the problems of lack of space and overcrowdedness, but nearly all the buildings are decrepit and would benefit from any investment. Purchase of new bed linen, pillows and bed covers and a washing machine appears to be the top priority. Furthermore, the inpatient unit is in need of renovation and refurbishment. The rooms used for the disciplinary measure of segregation are in extremely poor shape and have to be renovated.

As far as treatment of wards is concerned, it appears that special attention needs to be devoted to the high security ward, i.e. the juveniles referred to it. As we have already highlighted, they do not have the opportunity to engage in any purposeful activities, they do not have access to the education they need, and they spend less time outdoors than they should under the House Rules. Of course, it would be best if this ward did not even exist, but, if it must, then the staff should devote as much attention as possible to the wards, establish normal communication with them no matter how difficult that may be and no matter how they react to the staff's correctional and educational attempts.

As emphasised, the wards' right to visits should not be restricted at all, even when they are segregated. Furthermore, disciplinary offences should warrant the imposition of solely disciplinary measures or the so-called alternative measures, not in another way or at the discretion of the staff.

It would be advisable to undertake the following measures, which require concerted action by the relevant ministries and the JCI

administration. First of all, the status of the so-called programme assistants should be reviewed and they should be awarded all the powers they need to perform guard duties. Furthermore, more staff needs to be employed in the guard unit. Second, the certificates issued to wards should not carry the JCI stamp, because it undermines their prospects of finding a job after they are released. Third, given the high number of wards who had used drugs before coming to the JCI, the JCI, the competent health institutions and the Health Ministry should review the possibility of placing the methadone therapy at the disposal of the wards, who would then discuss the benefits of taking it with their parents and doctors. Finally, some problems could be pre-empted or alleviated if communication were improved between the JCI professional staff and the stakeholders charged with taking the decision on whether to refer a juvenile to the JCI or not and their reintegration after release.

3. BELGRADE CORRECTIONAL INSTITUTION – PADINSKA SKELA

Time of Visit: February 2011

Number of inmates at time of visit: 174 criminal and
17 misdemeanour convicts (191 in total)

Breakdown by age and gender: adult males

3.1. Material Conditions

The Belgrade Correctional Institution – Padinska Skela is a minimum security penitentiary, the compound of which spreads over a large estate, most of which is farmed. The buildings, in which persons deprived of liberty are held and which were designed to accommodate up to 200 people, take up a smaller plot. The penitentiary was not overcrowded at the time of our visit. The conditions of the facilities, in which the criminal and misdemeanour convicts are living, are solid; they are light and well-ventilated. The prisoners on their best behaviour and afforded the best treatment live in the best rooms – each has four beds and is well furnished; these rooms are spacious enough, light and clean and the shower room and toilets are in very good condition. The part of the penitentiary where prisoners afforded less favourable treatment live comprises larger dormitories with more beds; these facilities are somewhat less comfortable and well furnished. The bathrooms in this part of the penitentiary are not in as good a shape as the ones in the ward for the inmates afforded better treatment. The day rooms in the whole penitentiary are quite spacious and light. Given that the correctional institution has a number of day rooms, the smokers can be separated from the non-smokers. There are two small rooms serving as an inpatient unit, but, unfortunately, they do not fully meet the needs of ill inmates, because they are furnished with bunk beds. The solitary confinement cell is spacious enough and in solid

condition and has its own toilet/wash basin. It can be concluded that the facilities of the penitentiary are generally in solid shape, quite well-kept, although specific premises would benefit from refurbishment and/or new furniture.

3.2. Treatment of Inmates

This correctional institution is primarily designated for inmates sentenced to up to three years' imprisonment, for unintentional crimes and misdemeanours. However, men convicted for intentional crimes have been referred to this penitentiary as well, to alleviate the overcrowdedness in the other institutions. This is why this minimum security prison also has a ward that effectively applies a stricter regime (e.g. the inmates in it are not allowed to leave the establishment to visit their families, they may be visited or receive packages more rarely and have fewer opportunities to make telephone calls).

Most of the inmates are engaged in some form of work given that the penitentiary owns a large plot of land and runs a farm. The governor says that around 60% of the convicts engage in some form of work in the winter and that even more work in the summer. The convicts maintain the buildings, work on the farm and in the bakery, which supplies the whole District Prison in Belgrade with bread. Some convicts work outside the correctional institution. The penitentiary provides the convicts with the possibility to attend training in several crafts, but, unfortunately, they have not shown much interest in learning these trades. Educational workshops have also been set up. The convicts attending them, nearly one-fifth of the inmate population, learn about alcoholism, drug addition and peaceful conflict resolution.

The convicts spend at least two hours a day outdoors, as the PSEA lays down. Visits are also organised in accordance with the PSEA and, as a rule, last one hour. The penitentiary, however, does not have the facilities providing the inmates with the possibility to spend time alone with their spouses, children or other loved ones in a separate room.

Disciplinary offences are relatively infrequent and usually amount to the convicts' failure to return to prison on time from their weekend visits with their families or their mutual physical altercations, which are rarely serious or result in grave injuries. Withdrawal of privileges

is the disciplinary measure that has been imposed the most frequently. The convicts we spoke to did not complain about how the disciplinary proceedings were being conducted.

Self-harm is rare. Only one suicide attempt, by poisoning, has been registered recently. Physical clashes between the convicts are also rare.

Foreign nationals, found guilty of illegally crossing the border, serve their misdemeanour sentences in this institution. They are usually referred to the penitentiary in groups or, more rarely, alone. In most cases, at least one of them speaks English and then the staff and other inmates can communicate with the whole group. Problems in communication arise if none of them speak English or Serbian.

The convicts we spoke to did not complain about any form of physical or psychological abuse. They had some grievances about the regime, above all because they could not spend the time between breakfast and lunch in their dormitories, only in the day rooms where they do not have the opportunity to engage in purposeful activities. Furthermore, they complained that breakfast was served too early, which was why most of them missed it. We heard objections about hygiene in the cafeteria and the multitudes of flies and mosquitoes in the penitentiary in the summer. Some convicts complained about the work of the counsellors unit, specifically, that they did not know what treatment programme they were under. Quite a few of the convicts complained about the lack of opportunity to spend time alone with their spouses, children or other loved ones in a separate room.

Coercive measures are used rarely. They were used only twice in 2010 and 10 times in 2009.

3.3. Safety and Security

Given that the penitentiary applies a minimum security regime, the convicts can easily leave it, but they rarely do. Since inmates convicted for grave crimes are not referred to this penitentiary, there is no informal system or strong inter-prisoner hierarchy that threatens to undermine the safety and security in this institution. The last assault on a staff member happened five years ago. In principle, we can conclude that we have not noted any serious security-related problems in the penitentiary, with respect to both the convicts and the staff. There are, of course, physical

clashes between the prisoners on occasion, but not more often than in higher security prisons. These altercations are rarely serious.

3.4. Health Care

The health care unit is comprised of a general practitioner, a nurse and a dentist, who work Monday through Friday and come in during the weekend when necessary. The surgery is clean, spacious, light and well-ventilated. The doctor says that the unit is mostly well supplied with the basic equipment and medications.

The check-up on admission is conducted within the prescribed 24 hours. Both this and all other examinations are as a rule conducted in the absence of the guards. The convicts may schedule a check-up every day and are usually seen by the doctor without delay. The patients have access to their medical records. Specialist examinations are conducted in the Special Prison Hospital in Belgrade, to which the ill convicts are referred for inpatient treatment. The penitentiary nevertheless has two inpatient rooms; one is used by older convicts, placed there because the conditions in it are better than in the cells housing the general convict population. Examinations after the use of means of coercion are conducted in accordance with the PSEA, although it needs to be underlined that such means are rarely used. Convicts are also examined before they are released.

The share of convicts addicted to drugs is much smaller than in other penitentiaries, but it is quite high among the misdemeanour convicts. Only two convicts were using the methadone therapy at the time of our visit. Both had begun using it before they were referred to the penitentiary. Some inmates began attending psychiatric treatment for addiction diseases upon arrival.

The penitentiary has on display brochures on health protection and organises lectures on the subject. The medical staff has also been attending education programmes.

3.5. Staff

The penitentiary has 96 members of staff, one short of the number laid down in the organisational structure and staffing plan enactment. Like in other correctional institutions, most of them are working in the

guard unit – 43, as envisaged by the staffing plan enactment. However, the unit staff breakdown falls short of the enactment inasmuch as the senior managerial positions have remained vacant. As far as the unit's equipment is concerned, it would benefit from a new vehicle for the transportation of inmates, because its car pool is quite old.

3.6. Recommendations

We have not noted any major irregularities in the work of this correctional institution. The staff itself is aware of all the shortcomings, most of which can be attributed to the lack of funds. As mentioned, some facilities are in need of renovation. As far as treatment of inmates is concerned, everything we saw and heard during our interviews with them and the staff has led us to the conclusion that they are generally treated with decency and in accordance with the law. It would definitely be good if the penitentiary were to provide the inmates with more opportunities to work. Furthermore, they should be provided with the possibility to spend time with their wives, children and other loved ones in a separate room, as envisaged by the law. This may not be difficult to achieve in view of the fact that the penitentiary is not overcrowded. The convicts (who have elected representatives) and the administration ought to review the daily activity schedule and treatment regime to address the complaints we had heard about, without bringing into question the normal functioning of this establishment.

4. JUVENILE PENAL INSTITUTION IN VALJEVO

Time of Visit: March 2011

Number of inmates at the time of visit: 64 remand,
202 criminal and 4 misdemeanour convicts and 34
prisoners sentenced to juvenile prison
(304 inmates in total)

Gender breakdown: 300 males and four females (all
four remanded in custody)

4.1 Material Conditions

The Juvenile Penal Institution (JPI) is several kilometres away from Valjevo and was designed as a high security penitentiary primarily for juveniles sentenced to jail. It, however, has a number of features characteristic of district prisons, primarily because a large part of it is used as a remand ward, which, like in most district prisons, is quite overcrowded (there were 64 remand prisoners in it at the time of the visit, one of whom was under age). This ward is physically separated from the part of the compound where the convicted prisoners are kept. The latter comprises the dormitories and day room, workshops, the kitchen and cafeteria, the inpatient unit, the doctor's surgery, the visits room, school, rooms for conjugal visits and the pavilion with cells used for solitary confinement, segregation and enhanced supervision.

According to the governor, the penitentiary faces accommodation problems, not only because it has more inmates than originally intended, but also because it was designed with the idea that a large number of convicts would live together in large dormitory-cells, which has given rise to grave problems, notably security ones. There are smaller cells with 3 or 4 beds in the pavilion in which convicts under enhanced supervision are

kept. Most of the dormitories are well maintained, clean, light and well-ventilated. The only exception is the enhanced supervision ward; some of the cells in it are damp and the whole pavilion lacks the natural light and ventilation the other premises occupied by convicts have. The exercise yard in this part of the penitentiary is much worse as well – it is extremely small and provides hardly any opportunity for physical activities. The bathrooms in this part of the penitentiary are also in somewhat poorer shape than in the other convict pavilions. The solitary confinement cells are of the size prescribed by the law, but lack natural light. The room used for the segregation of juveniles is somewhat larger than the solitary confinement cells.

4.2 Treatment of Inmates

Although the JPI is a juvenile penitentiary in name, most of the convicts incarcerated in the Valjevo institution are young adults, many of whom have been convicted to short prison sentences. This is why the fluctuation of convicts is great – over 800 passed through it in 2010 alone. At the time of the visit, 57 of them were repeat offenders, transferred to the JPI from other institutions.

The governor says that most convicts are interested in the activities offered by the penitentiary, notably in group work with psycho-therapists and the sports and cultural activities. They are not as interested in working within the JPI; 130 convicts, who had previously undergone vocational job training, were working at the time of our visit. The penitentiary also provides primary education for adults and the inmates have the opportunity to attend educational panel discussions.

None of the convicts we spoke to complained of any form of abuse by the staff. They say they are treated decently both by the guards and the counsellors. Several, however, alleged that some convicts enjoyed privileges others did not. The inmates are able to exercise their rights to correspondence, telephone calls and visits in accordance with the law. The penitentiary provides the convicts with the possibility to spend time alone with their spouses, children or other loved ones in a separate room. None of the convicts had any serious grievances about the disciplinary proceedings, which are not infrequent (200 in 2010) and most of which had been conducted because of physical altercations among the prisoners. In order to pre-empt clashes, the penitentiary practices keeping some of

the convicts, namely those constantly trying to impose themselves upon the other convicts as leaders of informal systems and thus entering into conflict, in the enhanced supervision ward, which is physically separated from the rest of the penitentiary. As mentioned, the solitary confinement cells are located in this facility as well. We have noticed an interesting detail when we visited them. The beds are construed in such a way that the mattresses can be raised against the wall and locked, so that the convicts cannot sit or lie on them during the day, i.e. they can either spend the day sitting on a chair, standing or pacing up and down the cell. Needless to say, the chair is uncomfortable and spending hours on it, just like standing or walking in an area of just several square metres, can be unpleasant, even inhumane. Such beds can be seen in a number of other penitentiaries and solitary confinement cells, but none of the other institutions raise the mattresses against the wall and lock them anymore and the convicts are allowed to sit or lie on them during the day as well. This is why we are of the view that the convicts placed under solitary confinement in the JPI in Valjevo should be allowed to use their beds during the day as well and that this disciplinary measure can be administered in a more humane manner.

Although there are quite a few violence-prone convicts in the penitentiary, and thus, quite a few physical altercations, there are no records evidencing particularly frequent use of coercive measures (37 times in 2010). The reports drafted after the use of coercive measures indicate that the convicts subjected to them are always examined by the doctor after them, but not re-examined between the 12th and 24th hours from the time force was used, as Article 130(3) of the PSEA stipulates. The medical reports as a rule apparently do not include the statements of the convicts subjected to a coercive measure on how s/he sustained the injuries, if any, as laid down in Article 130(4) of the PSEA.

According to the governor, between 5% and 10% of the convicts are intellectually challenged and would be better off in another, more appropriate institution.

The penitentiary grounds provide solid opportunities for sports activities. The legal provisions on the minimum time inmates should spend outdoors are abided by, with the exception of the overcrowded remand ward, where the administration cannot ensure that the remand prisoners spend as much time outside as they should.

The counsellors unit conducts a special programme preparing convicts for their release and reintegration in society.

4.3. Safety and Security

The position, design and furnishings of the facilities, as well as the breakdown of the convicts, pose extremely challenging tasks before both the guard unit and the rest of the staff. First of all, it is easy to access the penitentiary grounds from all sides and throw objects into the yard in which the convicts spend time. There have been attempts to smuggle prohibited objects to the inmates in packages as well; for instance, the staff recently prevented a large quantity of drugs from being smuggled into the penitentiary in a package. Second, as already mentioned, most convicts sleep in very large dormitory-cell, so that the chances of clashes breaking out and abuse of weaker convicts are higher. Fortunately, as the convicts told us, the guards usually react promptly and prevent the outbreak of clashes or at least prevent them from resulting in grave consequences. Order is more difficult to maintain in the part occupied by the convicts also due to the lack of video surveillance (the remand ward is covered by video surveillance).

As mentioned, physical altercations between the convicts are not rare, maybe even more frequent than in most penitentiaries. They can be attributed not only to the fact that some of the convicts are extremely violent-prone, but also to the attempts by some convicts to impose themselves as informal leaders and dominate others. When they succeed, they as a rule try to extort money or services from the other convicts or their families. The JPI administration and staff are trying to be as well informed as they can about the inter-prisoner relationships to prevent extortion and abuse of the weaker convicts, but are constrained by the lack of guard staff.

Assaults on penitentiary staff are very rare (only one such assault was recently registered, notably in the remand ward), as are prison breaks. Rarely does a convict granted the privilege of visiting his family over the weekend fail to return.

4.4. Health Care

One general practitioner and three medical technicians staff the health care unit. The other doctor employed in the JPI is currently completing his specialist studies in psychiatry; the quality and volume of medical services provided to the convicts are sure to improve considerably

upon his return to work. The surgery and other health care unit premises are in satisfactory condition, but would benefit from refurbishment.

New entrants are examined within 24 hours from admission, in accordance with the valid regulations. All inmates (including remand prisoners) may ask to see the doctor every day and are examined without delay. The requests for check-ups are not prioritised. All examinations, including those after the use of coercive measures, are conducted in the absence of the guards. All patients have access to their medical records, which are regularly updated and properly kept. The convicts we spoke to had no complaints about the work of the health care unit. They say that the medical staff is nice and treats the patients decently. We already mentioned that the examinations after the use of coercive measures are conducted, but not repeated within 24 hours, as they should be under the law. We also mentioned that the doctor's report on the examination after the use of coercive measures should include the statements by the inmate subjected to the measure on how s/he sustained injuries, if any, as stipulated by the PSEA.

The penitentiary commendably tests all convicts for HIV and hepatitis. There were a large number of convicts with Hepatitis C at the time of our visit. Educational panel discussions on HIV and hepatitis have been held for all the convicts.

However, like in most penitentiaries, a large number of convicts had used drugs before incarceration. Some of them had entered a psychiatric treatment programme before coming to the JPI.

4.5. Staff

The penitentiary employs 174 staff, although the organisational structure and staffing plan enactment envisages a workforce of 192. The positions in the craft workshops and several positions in the guard unit were still vacant at the time of our visit. Although the JPI should have 104 guards under the enactment, only 96 were working in this unit in March 2011. However, even if all the guards were hired, the unit would still be understaffed. The new enactment drafted by the Penal Sanctions Enforcement Directorate envisages 125 guards in the unit. The current unit workforce is unable to perform all the guard duties and has at times been unable to escort the summoned inmates to the courts. Escorting

the inmates to trials is the most time- and staff-consuming duty they are charged with.

The penitentiary employs three legal professionals. Although the inmates thus have access to legal aid, the administration told us that they rarely sought this form of assistance.

The governor told us that the penitentiary had had problems with undisciplined workers and had subjected them to disciplinary punishment.

4.6. Recommendations

The penitentiary management is well aware of nearly all the shortcomings, which will be difficult to eliminate without substantial investments. The overcrowdedness of the remand facilities can only be eliminated by building new ones (the problem of overcrowdedness can, of course, be permanently addressed only by measures undertaken within the judiciary). It would be better if the JPI had smaller dormitory-cells with fewer beds than it does now, which, again, calls for substantial investments and construction works. Less funding would be required to improve the conditions in the enhanced supervision ward – the pavilion is in need of renovation and the exercise yard needs to be expanded and equipped. As mentioned, an end needs to be put to the practice of raising and locking the beds in the solitary confinement cells and the convicts should be allowed to sit and lie on their beds during the day, too. This measure would require no investments. The safety and security of the institution would benefit from installing video surveillance also in the wards in which the convicts are held and in the administrative section of the JPI.

As already noted, inmates subjected to coercive measures need to be re-examined and the doctor's reports on these examinations need to include the statements by the persons subjected to them on how they sustained any injuries, as the PSEA requires. Given that we did not hear any serious complaints about the staff's treatment of the convicts, we can only express hope that it will not deteriorate in the future. Since many of the convicts take drugs, it would be beneficial if the penitentiary provided as many programmes as possible to help them overcome the problems arising from addiction diseases. Furthermore, convicts should be encouraged

to work and involve themselves in work therapy programmes. As far as intellectually challenged convicts are concerned, the authorities should seriously reconsider whether they are able to serve their sentences at all, and if they are, whether the JPI is the suitable penitentiary for them.

JPI's staffing should increase, particularly the number of staff in the guard unit. The Penal Sanctions Enforcement Directorate has identified this as a problem as well and drafted a new organisational structure and staffing plan enactment, which will, hopefully, be implemented in the nearest future. It, of course, goes without saying that all penitentiary staff need to be provided with continuous advanced professional training.

5. PROKUPLJE DISTRICT PRISON

Time of visit: April 2011

Number of inmates at time of visit: 34 remand prisoners, 39 criminal and 5 misdemeanour convicts (78 in total)

Gender breakdown: 76 males, two females

5.1. Material Conditions

The Prokuplje District Prison is located in the very heart of town, next to the local police station. The prison building is situated on a very small plot of land, but the establishment also runs a farm outside town. The building in the centre of the town was built in 1927 and has since been expanded and reconstructed a number of times. We did not visit the farm during our visit and this report will only cover the conditions in the main prison building in the centre of Prokuplje. Although the conditions in the building have been improved by the reconstructions, some shortcomings in its design cannot, however, be eliminated. The lack of space is obvious in the whole prison, from the cells and other premises the inmates use and the staff offices to the exercise yard. The inmates have hardly any opportunity to engage in recreational activities due to lack of space. Many of the rooms and cells lack natural light and are difficult to ventilate. Furthermore, it is impossible to segregate the smokers from the non-smokers due to overcrowdedness. If the PSEA standard of 4 square i.e. 8 cubic metres of living space per inmate were abided by, not more than 80 inmates should be held in this prison. On average, it holds between 80 and 90 inmates but not all wards of the prison are evenly populated at all times. As a rule, the cells in the high security ward are full, even overcrowded, while free beds can be found in other parts of the prison. Fortunately, although there is a lack of living space in this ward,

it has enough beds and none of the inmates housed in it need to sleep on mattresses laid down on the floor. The police use one prison cell to hold persons in custody.

5.2. Treatment of Inmates

None of the convicts we talked to complained of abuse by the prison staff, although some remarked that the guards and counsellors could treat them better. They criticised the way they were categorised and the lack of activities and food. Contacts with the outside world are maintained in accordance with the law, with the exception of visits, which are shorter due to lack of adequate space. The time spent outside depends on the number of inmates and there have been instances of the prisoners spending less than the two prescribed hours a day in fresh air, but, as the prison governor told us, the inmates never spend less than one hour a day outside. Unfortunately, as mentioned, the inmates have hardly any opportunity to engage in physical activities due to lack of space.

Slightly over 20 convicts, i.e. over half of the convicts, are working. They work at the farm, in the kitchen, the workshop and the laundry room, jobs not requiring special training. Longer and more serious educational or job training cannot be conducted also because prisoners convicted to extremely short prison are referred to prison.

Disciplinary offences are infrequent and rarely grave. Most of the violations regard abuse of privileges, notably, late returns from weekend visits or under the influence of alcohol, or straying from the farm. None of the convicts were in solitary confinement or under enhanced supervision at the time of our visit. Self-harm is punished in disciplinary proceedings.

The prison administration assesses that around 60% of the prisoners suffer from an addiction disease and that most of them are heroin users. A number of them were in a very poor physical and psychological condition when they were admitted to prison.

We were told that the president of the local court never visits the remand ward, although he or a court judge he designates are under the obligation to do so at least once a week.

5.3. Safety and Security

Despite all the shortcomings of the building in the centre of town, it is not easy to escape from it. The last attempt of escape occurred in 2009. There have been instances of the inmates, mostly misdemeanour convicts leaving the prison grounds without authorisation. Fortunately, most of the dormitory-cells are smaller and do not have many beds, which reduces the risk of graver clashes erupting among the prisoners. Grave physical incidents between the prisoners are infrequent. One prisoner was recently sexually abused and criminal proceedings against the perpetrator were under way at the time of our visit.

There were two cases of self-harm recently – one convict sewed up his mouth and another one earlier tried to poison himself. There have been no assaults by the inmates on the staff for a long time now.

5.4. Health Care

The health care unit is not staffed by a full-time doctor. The prison has contracted the services of a doctor who works in the local emergency ward and he visits the prison every day to attend to the inmates, together with the medical technician. The paramedics are called in if an inmate needs medical attention during the night or the weekend.

The surgery is on the ground floor, next to the prison exercise yard and has the equipment for conducting basic health examinations. Specialist examinations are conducted in the town hospital. The prison does not have an inpatient unit and all inmates in need of such treatment are referred to the town hospital. The doctor assesses whether a patient referred for a specialist check-up or treatment outside the prison needs to be accompanied by medical staff, i.e. the technician. The prison governor assesses that nearly 90% of the prisoners receive some form of medical assistance. Furthermore, the doctor instructs guards to arrange longer stays outside for convicts in need of more fresh air for health reasons.

The examinations on admission are, as a rule, conducted within the legal deadline of 24 hours. The inmates can ask to see the doctor every day and are usually examined the same or the next day, unless they are in need of specialist check-ups. Appointments with the doctor are scheduled with the guards, who do not prioritise the requests or attend the check-

ups. The medical staff protects the patients' privacy and does not reveal their state of health to the staff. For instance, no-one but the medical staff knows which inmates suffer from hepatitis or HIV.

The Health Ministry staff have not visited the prison, but the Public Health Institute and the local health inspectorate have advised the health care unit on which measures to take to improve the medical services they provide.

5.5. Staff

Most of the 30 members of staff work within the guard unit. They are, however, understaffed and have to work overtime. The prison governor said that the unit was four guards short. The prison has two members of staff working in the counsellors unit. The prison has recently hired a legal professional; until then, there were some problems in the functioning of the institution, including problems regarding the conduct of disciplinary proceedings.

The working conditions are difficult not only because of the shortcomings of the building housing the prison and the understaffed guard unit, but also because the prison staff lacks equipment and uniforms. The prison would also benefit from having a new Black Maria (a vehicle used to transport inmates) in addition to the existing one.

The staff, as a rule those in the guard unit, occasionally commit disciplinary offences and are then subjected to disciplinary punishment.

5.6 Recommendations

The prison staff, notably the governor, are well aware of all the substantial shortcomings of this establishment and the irregularities in applying the PSEA. It is not easy to eliminate most of these problems. The position, design and condition of the prison building in the centre of Prokuplje leave a lot to be desired and account for many of the above-mentioned problems. It would thus be advisable to relocate the whole prison to a new, specially designated building, satisfying the valid penitentiary standards. Until then, all feasible measures should be undertaken to reduce the number of inmates incarcerated in this building, which would

help improve the conditions in this establishment. Given that the lack of space substantially limits and even precludes engagement in free-time activities and recreation, we are aware that it is not simple to offer the inmates much opportunity to engage in purposeful activities. This is why efforts should be made to employ as many of them as possible outside the establishment and provide the prisoners in the high security ward and the remand prisoners with at least a well-stocked library and several gym devices. Further efforts should be invested to allow inmates to spend longer periods of time with their visitors, particularly the prisoners who rarely have visitors or are incarcerated in the high security ward.

6. VRANJE DISTRICT PRISON

Time of visit: April 2011

Number of inmates at time of visit: 71 remand prisoners, 26 criminal and 10 misdemeanour convicts
(107 in total)

Gender breakdown: males

6.1. Material Conditions

The District Prison was erected in the heart of Vranje in 1964. If the PSEA provision, under which every person deprived of liberty should be provided with four square metres of living space, were abided by, this establishment would not hold more than 95–100 inmates at any one time. These data indicate that the prison building is quite small. It, however, not only lacks space for the accommodation of persons deprived of liberty but for their daily activities and offices for the staff as well. The prison is surrounded by buildings and thus cannot be expanded. The exercise yards are not big either and provide the inmates only with the possibility of strolling around them. At the time of our visit, 107 inmates were kept at the prison, which, according to the governor, is the average prison population in this institution. Therefore, the establishment is slightly overcrowded most of the time. Fortunately, it has enough beds and the prisoners do not have to sleep on mattresses laid down on the floor, which has been known to happen, albeit rarely, in the ward populated by remand prisoners, who always account for the majority of the prison population in Serbia.

All the facilities in which the inmates spend time are very well maintained, clean, well-ventilated and solidly furnished. The windows are not big and the premises facing the buildings around the prison lack natural light. Apart from the solitary confinement cell (which is in good condition, of the prescribed size, clean and well-lit and has a toilet/wash basin), the smallest cells are the ones in the remand ward – they are slightly over 15

square metres in area and have TV sets. The biggest multioccupancy cells are between 35 and 40 square metres in size and each fits 12 beds. One big cell, designated as the admission ward, is, however, used to accommodate remand prisoners due to lack of space in the remand ward. The prison facilities are also used by the police, which, according to the governor, gives rise to specific problems. The ward where the convicts are kept has two rooms used as day rooms, so that the smokers are segregated from the non-smokers. The kitchen is clean, but, given that it cannot be ventilated adequately due to the design of the building, emanates an unpleasant smell on occasion. The inpatient room with hospital beds is well equipped and maintained; next to it is the surgery. The bathrooms are in satisfactory condition and are well kept. Most inmates have their laundry washed at home – remand prisoners have their visitors bring them a change of clothing while the convicts use their privileges and spend their weekends at home; they can also wash their laundry in the prison washing machine. Only one convict was washing his clothes in the prison washer at the time of our visit. The prison also provides the inmates with the opportunity to spend time with their wives, children or other loved ones in a separate room, but they rarely make use of it because most of them use their privileges and go home for the weekends. Apart from the small exercise yard, which does not provide much opportunity for physical activities, the inmates have at their disposal a small gym with a treadmill. The prison does not own a farm, land or workshops where the inmates could work.

We may conclude that the prison premises are very well maintained and that, despite the overcrowdedness, the conditions in this establishment are better than in most other penitentiaries in Serbia. The lack of space is an insurmountable problem given that the prison cannot be expanded, but what we saw reassured us that the prison administration has been doing its utmost to ensure that the inmates are kept in the most humane conditions possible.

6.2 Treatment of Inmates

None of the prisoners we talked to voiced any grievances about the work of any prison staff. All of them said that the prison staff treated them decently and tried to help them resolve their problems. Several convicts complained about the work of the courts; their allegations were corroborated by insight in the duration of custody of some remanded

prisoners in this establishment. Namely, several remand prisoners had been incarcerated for over two years, and some had spent as many as four years in remand at the time of our visit. Apart from Serbian nationals, foreign citizens, not only from the neighbouring countries, are also remanded in or referred to this prison to serve their misdemeanour prison sentences. They include nationals of Afghanistan, Somalia, Greece, the USA and other countries. Many of them speak languages for which there are no interpreters in Vranje and they have difficulty communicating with others. In most cases, however, at least one of the foreign inmates, most of whom end up in prison for illegally crossing the border, speaks English and can communicate with others on behalf of his compatriots who cannot. Due to the vicinity of Kosovo, Macedonia and Albania, quite a few of the foreign inmates speak Albanian and little or no Serbian, which is not a problem given that several staff members speak Albanian. There have been no ethnically motivated incidents between the inmates or assaults on the prison staff in the past few years.

Unfortunately, as we already mentioned, the establishment does not have a farm, land or any production facility or workshop where the inmates could work. Only three convicts were working at the time of our visit – one in a company in town and two as assistants to the prison cook. The others were mostly spending their time watching TV. Fortunately, this establishment holds convicts sentenced to short prison terms, who are, as a rule, granted the privilege of going home for the weekends and thus spend relatively short periods of time in prison, where they are offered a small variety of purposeful activities. Due to the duration of the sentences, the prison does not provide education or work training.

The governor and the prison staff assess that between 40% and 50% of the inmates use drugs and say that most of them had committed their crimes to obtain drugs. The methadone therapy is not available because the city health centre does not provide one, but the prison conducts a drug treatment programme. Inmates suspected of drug use are subjected to drug tests, but this does not occur frequently.

Disciplinary proceedings are extremely rare (none were conducted in the first four months of 2011, only three were conducted in 2010 and two in 2009). Most of the offenders were punished by revocation of privileges. The measure of solitary confinement, pronounced twice in the past two years, was not enforced because the doctor assessed that

the inmates' health was too poor. None of the convicts we talked to had been subjected to disciplinary proceedings, wherefore we were unable to hear what the inmates' perceptions of the proceedings were. The documentation we perused, however, indicates that they are conducted fully in accordance with the law. Inmates, who tried to injure themselves, are not subjected to disciplinary proceedings. Interestingly, the prison initiated disciplinary proceedings against remanded prisoners found in possession of cell phones, which is quite rare in the Serbian penal system, and were punished accordingly by the competent court.

There were no records of the use of means of coercion in the past three years.

The convicts we interviewed had no objections about the conditions under which they established contacts with the outside world. Telephone calls and written correspondence are allowed in accordance with the law. They may also be visited on non-visitation days, which is commendable in view of the fact that their families may not always be able to visit them on visitation days.

The establishment staff is endeavouring to ensure that all inmates spend two hours a day in open air, as prescribed by the law, but, despite the existence of two exercise yards, this is sometimes impossible to achieve because of the overcrowded remand ward and lack of guards.

We can conclude that persons deprived of liberty are treated in accordance with the law in principle, with minimum exceptions caused by problems the prison governor and staff can hardly affect. It would, of course, be good to invest additional efforts and enable more inmates to work outside the establishment, given that there are only several jobs available within the prison.

6.3. Safety and Security

The position of the prison building does not only affect the living conditions in it, but its safety and security to an extent as well. The fact that the prison shares the yard with the courthouse at one end definitely does not contribute to security; fortunately, there have not been any grave consequences to date. Graver incidents, undermining the safety of the establishment, its staff and persons deprived of liberty, are very rare. There was only one successful prison escape in the last decade and one

assault on the prison staff in the past few years. The criminal proceedings against the assailant were still ongoing at the time of our visit. Inter-prisoner violence is extremely rare. Given that the prison is small and that the convicts found guilty of milder crimes are referred to it, there is no informal or clear hierarchy among them.

The prison governor and staff say that the introduction of a new, adequate video surveillance system replacing the outdated and inadequate one would greatly facilitate prison safety and security.

The prison has cell phone detectors. The staff has rarely found either cell phones or drugs on the inmates.

6.4. Health Care

The prison does not have a full-time doctor on staff and has contracted a doctor on a part-time basis to come in every workday. There is a full-time medical technician, who is in every workday from 07:00 to 15:00. The local paramedics are called in if the inmates are in need of medical assistance out of hours. The prison cooperates extremely well with the local hospital. The guards distribute the prescribed therapies to the inmates when the medical technician is not in. The police are charged with ensuring that persons held in police custody in this establishment get the medical assistance they need.

The surgery occupies quite a spacious room for an establishment of this size. It is extremely neat, clean and has good access to natural light. Next to it is an inpatient room with hospital beds. The health care unit has a wheelchair it uses to assist immobile patients. It also has an ECG, devices for measuring blood pressure, blood sugar, triglycerides and cholesterol and equipment for ear, nose and throat examinations. The surgery is well supplied with medications. Admission check-ups are conducted within the legally prescribed 24 hours, always in the absence of non-medical staff, just like the other examinations, which are scheduled with the medical technician or the guards and usually take place without substantial delay. Specialist examinations are conducted in the local health centre. Although the prison has an inpatient unit, it is rarely used because the prison is not staffed by medical personnel around the clock. Patients in need of inpatient treatment are usually transported to the local health centre, where they are held under the supervision of the guard unit. The prison

covers the costs of tooth extraction and repair, but the inmates have to pay for prosthetic services. The surgery is also supplied with sanitary towels and other hygiene products for women, who are occasionally remanded in custody in this establishment.

Lectures on health are organised for the inmates and the medical technician occasionally attends professional seminars, but notes that he would benefit from training in the early recognition of psychological disorders and suicidal tendencies.

Self-harm, particularly grave one, is extremely rare. Suicide attempts are even rarer. Hunger strikes are infrequent as well.

As mentioned, there were no records on the use of means of coercion in the past three years, wherefore we were unable to check whether convicts subjected to them undergo medical examinations as stipulated by the law. Our interview with the medical technician reassured us that he is well aware of the obligations of the health care unit, i.e. the doctor, in such situations.

A relatively large number of prisoners, around 10 of them, are infected with Hepatitis C, wherefore it is crucial that all inmates are told about how they can protect themselves from both Hepatitis C and HIV.

Health Ministry officials have never visited the health care unit in this prison or monitored its work.

6.5. Staff

Most of the staff work in the guard unit. The 25-guard unit is understaffed and puts in a lot of overtime, but is still occasionally, about once a year, short of staff and unable to take a remand prisoner to trial. The guard unit does not lack only staff, but equipment as well. Apart from the new video surveillance system mentioned above, it is in need of another special vehicle for transporting prisoners given that it currently has only one Black Maria.

The prison employs two counsellors and one social worker, which is sufficient in view of the small number of convicts. It also employs a legal professional.

Staff relations are very good. Staff have meetings with the governor every morning, wherefore he is well informed about the work and needs of every unit.

Staff had not violated disciplinary or employment rules for a long time, until the latest escape attempt, which was successful because of the negligence of a guard. He was subsequently subjected to disciplinary proceedings.

6.6. Recommendations

Judging by what we were able to see during our visit, the prison governor and staff are doing their utmost to fulfil all their legal obligations and it would be very difficult to find any lapses in their work. We can only express the hope that they will keep up the good work. Some of the problems the establishment faces can only be addressed and its work can only be improved with the help of the competent ministries and other state authorities.

First of all, the police should be relocated to another facility as soon as possible, where they will have full control over persons remanded in custody. Furthermore, all efforts should be made to reduce the number of remand prisoners, something which only the competent courts can do. As mentioned, some remand prisoners have been in custody unreasonably long. It would also be useful if records were kept on the languages spoken the most often by foreign nationals kept in the establishment and for which there are no interpreters in Vranje. With the help of the courts and Justice Ministry, interpreters for the most commonly spoken foreign languages could then be identified and placed at the prison's disposal.

We already mentioned that the guard unit was in need of more staff, adequate video surveillance and a special transportation vehicle. The prison governor told us that the Penal Sanctions Enforcement Directorate is also aware of these needs and we can only express hope that sufficient resources will be made available to meet them.

We also mentioned that additional efforts should be made to find employment for as many inmates as possible in some of the city companies, whereby they would be able to spend their time in prison in a more purposeful way.

It would also be beneficial if the prison enabled all prisoners access to the methadone therapy in cooperation with the local health centre, i.e. the Health Ministry. They would then have the opportunity to themselves decide whether they will use it, in consultation with their doctors.

7. SREMSKA MITROVICA CORRECTIONAL INSTITUTION

Time of visit: May 2011

Number of inmates at time of visit: 194 remand prisoners, 1890 criminal and 38 misdemeanour convicts (2122 in total)

7.1. Material Conditions

The Sremska Mitrovica Correctional Institution, built as a prison during the reign of the Austro-Hungarian Empire in the late 19th century, is located on the northern outskirts of the town, next to the Belgrade-Zagreb highway. Part of the compound is south and part of it is north of the highway, out of town. The administrative building and most buildings in which persons deprived of liberty are kept are south of the highway, between two residential settlements. In addition to the administrative building, this part of the compound comprises several pavilions and smaller buildings in which inmates under high security are held, the remand ward (with its own surgery), the surgery and inpatient unit, workshops and production facilities, a church, exercise yards, a sports centre, Hotel Srem, owned and managed by the penitentiary, and the so-called Pavilion 5 in which some of the inmates under medium security are kept. The other convicts under medium security are living at another location, called Zelengora (Green Mountain), a few kilometres away from the administrative building. Zelengora, too, has its own surgery. The inmates under minimum security are kept at a third site, several kilometres further away from the administrative building. This part of the penitentiary, called “Small Grange”, is located next to the cattle-raising facilities. The establishment also possesses a lot of arable land near all the buildings and a hotel in Soko Banja.

This correctional institution is seriously overcrowded although it has a large number of buildings and a lot of land. With over 2000 inmates, it is the largest penal institution in the state. Its inmate population would have to be reduced to 1500 for it to ensure the inmates the living conditions guaranteed under the Penal Sanctions Enforcement Act and the enjoyment of all legally guaranteed rights and normal working conditions for the penitentiary services. At the time of our visit, the vast majority of the convicts, over 1500 of them, were incarcerated in the high security ward.

A lot of investments have been made in the renovation and construction of the buildings in the last few years and they no longer have huge dormitory-cells with 80 or 90 beds, at least not in the high security ward. The biggest dormitory-cells can now be found in Pavilion 5 across from the administrative building and the high security ward, which is occupied by prisoners under medium security. Two dormitories in this ward have 50 beds each. None of the other wards in the establishment have such large dormitory-cells.

The high security ward buildings can be divided into three groups. The first comprises the recently built or renovated buildings, where most of the convicts under high security are kept. Most of the cells in these buildings were designed to have four beds, but, due to overcrowdedness, all of them have more beds than initially planned (usually six rather than four). These cells are mostly in good condition, with a lot of natural light and good ventilation; the hygiene in them is maintained at a satisfactory level, but some of them, like the day rooms next to them, lack furnishing (notably, the cells and day rooms in the largest pavilion, Pavilion 1, occupied by more than 400 convicts at the time of our visit). Namely, some of the cells lack coffee tables and the inmates are having a hard time eating their meals in their cells; some of the day rooms are almost bare, but are nevertheless used, mostly for preparing food (we, for instance, saw a prisoner fixing his lunch on a hot plate in one totally empty day room). Nevertheless, the conditions in the recently built or reconstructed buildings can be qualified as very good. The convicts (except those under enhanced supervision) may move around the buildings during the day and are locked up in their cells at night.

The second group of buildings in the high security ward is comprised of the buildings also initially built to accommodate inmates, but they are much older and in much poorer condition. The cells are less spacious;

the hygiene in them is poorer, as is access to natural light and ventilation. The furniture and bathrooms in these buildings are also older and in poorer shape. Finally, the third group of buildings i.e. cells, are those which had until recently not been used to accommodate inmates at all and were converted to alleviate the overcrowdedness (e.g. the cells next to the kitchen and the ones in the firehouse). The conditions in these rooms are by far the worst. They are located in relatively old and dilapidated buildings. These rooms are the smallest and difficult to maintain because they are so decrepit; the conditions for maintaining personal hygiene in them are extremely poor, so that some prisoners in these cells have even contracted scabies and other skin diseases caused by poor hygiene. The convicts living in them complained of the lack of hot water; we could see for ourselves what poor shape the bathroom facilities are in.

The exercise grounds in the high security ward are quite large and there is a sports centre in it with several playing fields and a gym. Sports activities are extremely popular among the convicts and sports play a central role in the lives of most convicts who are healthy enough to engage in them.

As mentioned, convicts in the medium security ward are incarcerated at two locations, in Pavilion 5, across from the high security ward, and at Zelengora. As noted above, Pavilion 5 is the only building with large, group dormitories. There are two such dormitory-cells, with around fifty beds each; they are spacious and satisfy, if not exceed, the PSEA minimum requirement of four square metres per inmate. This pavilion is quite old, as is the furniture in the dormitories, which are nevertheless in a tolerable state. The toilets are, however, extremely decrepit. The underground waters under the building had flooded the basement at the time of our visit and the damp could be felt upstairs as well. The convicts say that the waters that flood the basement have much greater effects on the living conditions in the building and cause major problems in the wintertime. Therefore, the conditions in Pavilion 5 can be qualified as quite poor and we can conclude that these extremely miserable conditions have not rendered life in this part of the penitentiary intolerable only because this pavilion houses inmates who are not violence prone and in principle rarely cause problems, and who are subjected to the more lenient medium security ward regime. The living conditions in Zelengora, occupied by the other criminal convicts under medium security and the misdemeanour

convicts, are much better. One of the buildings is new, modern, has good access to natural light and is well equipped; the other buildings are smaller, somewhat older, but in good shape, with fewer convicts per cell. It needs to be underlined that the part of the new building in which the misdemeanour convicts are kept is overcrowded and that some prisoners have to sleep on mattresses on the floor. The penitentiary is trying to address this problem by transferring the inmates to other institutions. However, given the vicinity of borders, its endeavours are undermined by the constantly high inflow of misdemeanour convicts, mostly those punished for illegally crossing the border. This part of the medium security ward has a large plot of land where the inmates can spend their time outdoors.

The minimum security ward is the furthest away from the administrative building and the town and is occupied by the smallest number of inmates. There were fewer than fifty of them at the time of our visit. The buildings they live in are old and quite rundown and in need of comprehensive renovation. One of the rare upsides of this ward is its spaciousness; each convict has much more than the legally required four square metres of living space. However, notwithstanding the poor state of the minimum security ward building, most convicts qualify the overall living conditions in this ward as solid for several reasons: they are subjected to a much more lenient regime and are allowed to work, the grounds are large, and they can enjoy the peace and quiet and are able to rest.

The food is prepared in the high security ward. The kitchen, although quite large, does not satisfy the needs of the penitentiary at the moment, because it was not designed to cater for so many prisoners. The ones we talked to, some of whom work in the kitchen, said that they lacked dishes and had very little time to wash them in between the lunch shifts, which is why they usually served the food on dirty plates and gave the convicts smudgy spoons and forks.

To conclude, notwithstanding the investments in modernising some parts of the penitentiary, the material conditions in it are generally exacerbated by the serious overcrowdedness. The conditions in which convicts in the old, non-renovated buildings are living, particularly the ones kept in the recently converted facilities, are indeed extremely poor and cannot be qualified as humane. All efforts should be made to alleviate the overcrowdedness in this penitentiary. Furthermore, many of the facilities need to be renovated.

7.2. Treatment of Inmates

We interviewed around 100 convicts during our three-day visit. We had been receiving letters and phone calls from the inmates incarcerated in this institution both before our visit and after it so that this part of the report is based on all the information we received about the penitentiary, not only on our findings during our visit. During our visit, we, of course, did our best to verify the information the convicts had relayed to us in their letters and telephone calls.

Unprompted by any questions about the work of the health care unit, nearly all the convicts we spoke to complained that the penitentiary dentist was violating all the rules of his profession. Specifically, they alleged that he used the same, unsterilized instruments on a number of patients and that they were thus at risk of contracting HIV or hepatitis, which quite a few inmates suffer from. Furthermore, quite a few convicts claimed that the dentist's communication with his patients was extremely unprofessional. We were unable to verify whether these allegations were true during our visit. The sterilisation equipment we saw in the dentist's surgery indicates that he has the apparel he needs to professionally provide dentistry services. Given that a large number of prisoners voiced the same grievances, and quite persuasively at that, we raised the issue with the deputy governor, who expressed the readiness to seriously look into the claims and take appropriate steps if it turned out that they were true. We must underline at this point that if it really transpires that the dentist is using unsterilized equipment and is thus consciously putting the patients' health at risk, the penitentiary's appropriate reaction should involve not only launching disciplinary proceedings against him, but filing a criminal report against him for medical negligence as well.

Several convicts also complained that the medications they had been prescribed were not on the so-called "positive" list of free medications and, thus, are not provided by the penitentiary. Instead, their families send them these medications in packages, which they receive with great delays and sometimes have to interrupt their treatment. All medications inmates receive in packages are first sent to the health unit, which checks them to prevent abuse, and are then forwarded to the recipients. The convicts understand why this procedure is in place and do not question it, but they allege that the health unit holds on to the medications for a long

time, sometimes more than a week. We are aware of the huge workload burdening the health unit given the overcrowdedness and the likelihood that it is unable to perform all its duties efficiently but efforts should be made to find a way to speed this procedure up. If that proves impossible, the prisoners should be alerted in advance that the procedure may take long (e.g. up to 10 days) and that they bear this in mind when they ask their families to purchase their medications for them. This would partly pre-empt the risk of the prisoners running out of their medications.

We heard hardly any complaints about any form of physical or psychological abuse. Several convicts, however, mentioned that the guards in Pavilion 3, which houses the solitary confinement and enhanced supervision cells, on occasion resorted to force without cause. The penitentiary should ensure that coercive measures are used in the whole penitentiary only when one of the legally prescribed reasons arises and that the guards always act within their remit. From what we had heard from most prisoners and seen during our three-day visit, the guards in principle treat the inmates decently and respect their dignity. The relations between the guards and persons deprived of liberty are mostly tension-free and the convicts do not appear to fear the guards at all. Convicts in most parts of the penitentiary felt free to ask us questions and voice their complaints about the conditions in the establishment and its work even in the presence of the guards, without apprehension that they would face consequences for what they told us.

Like in most other penitentiaries we visited, quite a few convicts complained that they were categorised too harshly (most think that they should have been classified as Category B not Category C and referred to the medium security ward). Most convicts qualified their relationships with the counsellors as all right, but said that they did not see them often enough, that they did not have as much opportunity to talk to them as they would like, particularly since the new Rulebook on Treatment, Treatment Programme, Categorisation and Re-Categorisation of Convicted Prisoners (*Sl. glasnik RS 72/2010*) came into effect. The Rulebook itself is not problematic of course and the convicts cannot reasonably complain about it, but it requires much more involvement of the counsellors unit, which is already staggering given the overcrowdedness and does not have much time to talk to the convicts. We visited the counsellors unit and talked to the head of the unit and saw for ourselves that it was unrealistic to expect

of the counsellors to work directly with the convicts more intensively in the existing circumstances, with such huge numbers of convicts. Namely, under the new Rulebook, the counsellors need to collect a large number of data to categorise each convict, some of which cannot be obtained from the convicts themselves. Therefore, one counsellor can at best fill two questionnaires and categorise two convicts during one workday if s/he devotes the whole day just to this endeavour and does not encounter huge difficulties in obtaining the data. (The new Rulebook applies also to convicts who had been admitted to the establishment before it came into force, i.e. the counsellors unit has to collect data needed for the categorisation of all convicts; to recall there were 1890 of them at the time of our visit). The counsellors unit, however, is not tasked only with categorisation. It also responds to the numerous submissions filed by the convicts every day (sixty or so submissions were filed the day we had our meeting with the head of the counsellors unit), renders courts its opinions on petitions for parole and performs other duties within its remit. Bearing all this in mind, it is not difficult to conclude that the 22-man counsellors unit is having an extremely hard time handling its workload, which is an additional reason why the number of prisoners kept in this establishment has to be cut down.

As far as contacts with the outside world are concerned, none of the convicts we talked to claimed that they were being deprived of this right, but they did note that there were problems with exercising it due to the overcrowdedness and lack of staff. Several convicts alleged that the canteen was sometimes out of stamps and that they could not post their letters when they wanted to; this may result in grave consequences in situations when their letters must arrive at their destinations by a specific deadline (e.g. appeals against different decisions taken by the state authorities). A greater number highlighted another problem in establishing contact with the outside world, more precisely with their families and loved ones. They think that the visits are not organised well: all visitors coming on visitation day are told to come at the same time and then have to wait in front of the penitentiary gates for hours before they are let in. This problem can be addressed easily, because there is no reason why the establishment cannot specify a precise hourly schedule when the convicts can receive visitors. These two complaints about contacts with the outside world were the only ones we had heard. The convicts have no doubts about whether

the letters they send actually arrive at their destinations; they have access to telephones in accordance with the law and encounter no problems in exercising their right to spend time in a separate room with their spouse, children or other loved ones.

All the inmates are provided with the opportunity to file complaints with the state Protector of Citizens and the Vojvodina Provincial Ombudsman.

Although this establishment is overcrowded, the convicts spend at least two hours a day outdoors, as provided for in the law. Most of them spend that time in the sports centre, where they have the opportunity to engage in various sports activities. This is highly commendable and the convicts stress that they are very pleased that they have the chance to involve themselves in sports. Apart from sports activities, the convicts also have the opportunity to join various arts and crafts workshops, but are generally not as keen on them as they are on sports. The penitentiary provides the inmates also with the opportunity to continue their schooling and attend job training. The number of convicts who can work depends on the current volume of production in the facilities; the convicts say that this volume has been waning recently, which is why the share of convicts who are working is relatively small.

There were quite a lot of complaints about the quality of the food, which, the convicts say, is of poor quality. A number of convicts, not a negligible one at that, do not even eat the food prepared in the kitchen of the establishment; they either eat the food their families send them in packages or buy food in the canteen. Unfortunately, not all convicts can afford to do so and have no choice but to eat the food prepared in the kitchen, which, as we already noted, is served on dirty plates, along with unwashed cutlery.

Like in nearly all penitentiaries across Serbia, this establishment, too, has a high percentage of convicts suffering from addiction diseases. The staff estimates that they account for at least 50% of the prisoner population at any one time. The establishment conducts the methadone therapy, but only if the prisoners had started it in another institution.

Judging by the documentation on disciplinary proceedings we had seen and the information we obtained from the convicts, disciplinary proceedings are conducted in accordance with the law. Records on the use of means of coercion are also properly kept.

The Sremska Mitrovica Correctional Institution is the only penitentiary in the country in which foreign nationals convicted of crimes serve their prison sentences. All of them are kept in the high security ward of the establishment, in identical conditions as the Serbian inmates. Most of them are, of course, the nationals of neighbouring states, above all of Montenegro and Bosnia-Herzegovina, but citizens of other countries are also incarcerated in this establishment. We talked to several foreign prisoners and their complaints essentially did not differ from the ones we heard from the Serbian prisoners. They mostly complained about the poor material conditions and the quality of the food. They are in a less favourable position than the domestic prisoners when it comes to visits, because their families live further away and cannot visit them as often. This is why the establishment would do well to allow these prisoners extended visits to these prisoners on the rare occasions they have visitors. We heard no remarks that the foreign prisoners were in any way privileged or discriminated against, or that there had been any ethnically motivated incidents among the convicts.

Some of the convicts suffer from disabilities, but the penitentiary does not have adequately adjusted facilities for some of them, above all those who use crutches. Although the staff tries to place such convicts in the best cells, they still encounter problems, e.g. when they have to use the toilet. Namely, the penitentiary bathrooms do not have toilet bowls, only squat pan toilets, which persons on crutches have great difficulties using.

Other special categories of prisoners - juveniles and women - who may be kept only in the remand ward, are treated adequately under the circumstances. Remanded women are provided with the opportunity to take baths more frequently and the penitentiary looks after their specific needs. Due to overcrowdedness, the juveniles cannot be held separately from the adults, which is why the penitentiary takes special care when assigning them to cells and endeavours to put them in cells with non-violent adults. Even if there is an empty remand cell, the staff will never keep a juvenile alone in it, which is commendable, because it is better to keep juveniles together with adults than alone i.e. practically in solitary confinement.

To conclude, the penitentiary staff is by and large treating the convicts adequately and most of the shortcomings in their treatment arise from the overcrowdedness of the institution, which is increasingly threatening the functioning the establishment and bringing into question the realisation of the inmates' fundamental rights.

7.3. Safety and Security

The increasing overcrowdedness of the penitentiary further exacerbates the work of the understaffed guard unit and threatens to put the safety and security of the establishment at risk. The 300-strong guard unit is seriously understaffed. The administration and guard unit staff think that the penitentiary needs another 100 or so guards. The guard unit also lacks transportation vehicles; in case one of them breaks down, the penitentiary faces problems in transferring prisoners to their trials or medical institutions. The video surveillance system was being upgraded at the time of our visit and the whole penitentiary is to be covered by cameras in the foreseeable future.

No one has recently tried to break out of this correctional institution, but prisoners have been known not to return. There have been no suicides or suicide attempts in the past couple of years, but they had occurred in the past. There are inter-prisoner incidents, but there have been no attempted murders or physical clashes seriously endangering the lives of the convicts recently. The above conclusion that the overcrowdedness and lack of guards threatens to undermine the safety and security of the institution was made to alert to the small number of guards in specific pavilions, in which they can hardly prevent the abuse of weaker or particularly sensitive convicts, particularly in the pavilions in which the cells are not locked and in which large groups of inmates spend time together in the hallways or the day rooms. The convicts we talked to did not allege that the guards were unable to protect all the prisoners, but everything we saw has led us to conclude that the likelihood of inter-prisoner abuse without the staff noticing or preventing it is great.

The penitentiary administration and staff say that all convicts' allegations that their safety is in danger are seriously investigated and, if it is established that they are true, the staff separates these convicts and makes sure that they are not in contact with the persons who may endanger their well-being.

7.4. Health Care

The health unit employs five doctors (two on permanent and three on fixed-term contracts), one dentist, eighteen medical technicians, one lab assistant, one dental technician and one pharmaceutical technician.

The health unit is headed by a doctor, a specialist in psychiatry. The doctors work from 7 am to 3 pm, but they are also on call in the afternoons and at night. The technicians work in 12-hour shifts in the high security ward, and from 7 am to 3 pm in the other two surgeries located in the remand and medium security wards (Zelengora). A doctor is on call every weekend and comes to the establishment when necessary.

The penitentiary has three surgeries, one in the high security ward, one in the medium security ward and one in the remand ward. All three surgeries are sufficiently spacious and have good access to natural light. They are clean and equipped with the basic diagnostic instruments for the physical examinations of the patients. The central surgery also has an ECG and an oxygen machine. Ampoule therapies are administered and the patients are bandaged in rooms next to the doctor's surgeries. The establishment also has an X-ray cabinet used for making basic X-ray shots, a laboratory and a dentist's office. The lab conducts the main analyses, such as testing for psychoactive substances, while blood samples are sent to the town hospital for specialist analyses. The dentist says that the equipment in his office is quite outdated, but that it can be used to perform all dentist interventions except prosthetic ones.

The doctors say that the medicine cabinet is not as well-supplied as it should be given the needs and number of prisoners. They are of the view that the main reason for the lack of medications lies in the establishment's financial difficulties. The medications are prescribed by the doctors and given to the patients by the technicians every day.

An inmate's urine is tested for psychoactive substances usually only when the guards suspect that he is using psychoactive substances. The prisoners are under the obligation to sign the results.

The penitentiary provides the methadone therapy for inmates who had commenced it prior to arrival, but its psychiatrist does not prescribe it. The methadone is taken in the surgery, in the presence of a technician.

The inpatient unit has 30 beds. The rooms are in poor shape and are furnished with beds and bedside cabinets. These rooms do not have separate bathrooms and the patients use the common bathroom. The head of the surgery told us that the inpatient unit in fact could not admit 30 patients, because psychiatric patients, who cannot be accommodated elsewhere in the establishment, were referred to this unit.

All inmates are examined by a doctor within 24 hours from admission. If a prisoner is admitted during the weekend, the doctor on call comes to examine him/her. Apart from talking with the inmate about the health problems and any diseases s/he had suffered from, the doctor also performs a physical examination of the inmate, as confirmed by the inmates' health files which are opened during the first examination. All newly-arrived inmates are tested for HIV and Hepatitis B and C, unless the documentation they bring with them confirms that they have one of these viruses.

Prisoners in need of an examination schedule appointments with the guards and are not under the obligation to specify why they want to see the doctor. They may schedule an appointment every day, without any restrictions. If none of the doctors are on duty, the paramedics are called in or the prisoners are transferred to the town hospital in case of an emergency. The head of the surgery and the chief technician say that cooperation with the civilian institutions is not excellent and that the hospitals mostly admit only inmates in need of emergency assistance, but that they most often put off the admission of non-urgent patients for long periods of time. The doctors attribute this to the penitentiary's failure to pay its debts to these civilian institutions in the past.

The establishment is periodically visited by medical specialists: the surgeon comes in once a month, the internist twice a week, while the ear, nose and throat, eye, skin doctors, the urologist, physiatrist, pneumo-physiologist come to see the patients once or twice a month. Psychiatric assistance is provided regularly given that the health unit is headed by a psychiatrist. When necessary, the prisoners are taken to see a specialist in the town hospital; they are also entitled to see the doctor of their own choosing, but at their own expense.

The penitentiary has its own ambulance. A medical technician always accompanies an inmate being transferred to a health institution for treatment.

The doctors always examine a convict assigned to solitary confinement just before he is sent there and they visit him in solitary confinement every day.

Health records are updated regularly, with the exception of records on examinations conducted after the use of means of coercion. These examinations are conducted three times within the first 24 hours after the

use of coercive measures and are recorded in the inmate's health file, but reports on these examinations are not kept in separate health records.

An inmate is treated for an illness only with his/her prior consent. Patients who refuse treatment have to certify their refusal in writing. Hunger strikes are staged occasionally; the health unit keeps separate records on them, in which it enters the days the strike began and ended and the hunger strikers' daily blood pressure results and weight.

Preventive steps mostly boil down to the control of the food (which is tasted by a doctor or a technician), sanitary inspections of the kitchen staff, and occasional lectures on contagious diseases. We noted that HIV positive inmates are discriminated against, which testifies to the low degree of awareness of how the disease is contracted among the prisoners.

The prisoners are responsible for maintaining their personal hygiene and the cleanliness of the facilities they spend time in. Both are rarely inspected by professional staff.

Every prisoner is examined prior to release. In the event he is transferred to another penitentiary, his whole health file is sent on to the recipient institution.

The Health Ministry has not visited the establishment or overseen its work.

7.5. Staff

As mentioned, the guard unit had 300 and the counsellors unit 22 members of staff at the time of our visit. The establishment has slightly over 500 employees in all. Some work in the production facilities or are involved in food production. As noted, the establishment, notably the guard and counsellors units, are understaffed in view of the current number of prisoners, which is why these units have a very hard time coping with their duties. Both units need to recruit a lot of staff unless the inmate population in this correctional institution is substantially reduced.

7.6. Recommendations

In this report, we highlighted the gravest problems we identified during our visit and tried to offer reasonable recommendations on how to eliminate or at least alleviate them. Following is a summary of the main problems and our recommendations.

First, overcrowdedness is the main problem giving rise to a series of other problems. Overcrowdedness is also the reason why persons deprived of liberty are housed in buildings and facilities not initially designated for this purpose. These facilities are in bad condition and are more or less uninhabitable. Problems arising with respect to the work of the kitchen and serving of food caused by overcrowdedness should not be disregarded either. Reducing the number of inmates by transferring them to other establishments is thus requisite and should be insisted on until the size of the prison population is reduced to the level at which there is no need to use the aforementioned facilities.

At least a couple of rooms and toilets need to be renovated and adjusted to the needs of persons with disabilities.

Second, the work of the health unit, more precisely of the dentist, needs to be thoroughly inspected to ensure that the patients' best health interests are always borne in mind.

The penitentiary administration and the Penal Sanctions Enforcement Directorate need to review what measures they can take to address the problem of short supplies of medications.

The noted problems regarding the delivery of medications to prisoners in packages and the organisation of visits could be addressed by improving the organisation of the work of the relevant units.

Particular attention should be devoted to the quality of the food, which the convicts qualify as extremely poor.

The establishment should make the methadone therapy available to all prisoners who want to take it, not only those who started it before they were admitted to this correctional institution.

Furthermore, the administration should endeavour to enable as many convicts as possible to work. Judging by what they told us during our visit, they would like to work.

8. ZAJEČAR DISTRICT PRISON

Time of visit: June 2011

Time of previous visit: September 2009

Number of inmates at time of visit: 19 remand, 2
misdemeanour and 132 criminal prisoners
(153 in total)

8.1. Material Conditions

The Zaječar District Prison has been categorised as a medium security penitentiary. Located on the outskirts of town, it comprises several buildings housing the high, medium and minimum security wards. At the time of our visit, there were 50 inmates in the high security ward, 60 in the medium security ward and 10 in the minimum security ward. Twelve convicts were kept in the admission department. The remand prisoners were, of course, incarcerated in the high security ward. The high security ward is located in a separate, fenced-off building. The surgery is located in this building.

Just like during our previous visit nearly two years ago, most cells in the high security ward accommodated eight inmates each, but there were cells shared by four prisoners as well. The lack of fresh air and, to an extent, natural light, is still the main problem in this ward, particularly on the ground floor. All the cells are stuffy and airing them is nearly impossible, all the more since most of the convicted and remand prisoners are smokers. No construction works were undertaken to eliminate the problem between the two visits. A project for installing ventilation had been designed a long time ago, but it has not been implemented due to lack of funding. Between our visits, the prison administration designated a room in the section of the ward occupied by convicted prisoners for the smokers; we saw six convicts in it during our visit, which is the maximum number of people that can fit in it. The smoking and non-smoking

remand prisoners, however, have not been segregated yet and the non-smokers among these inmates are living in truly miserable conditions. As mentioned, the cells lack natural light, especially on the ground floor. The cells on the first floor have more light, but the inmates living in them face another problem – there are no toilets in the cells, only a common bathroom shared by all prisoners on the whole floor. It, too, can hardly be ventilated, and is stuffy, fusty and very dirty. The prisoners in this ward are given their meals in their rooms. They do not have a day room either, so that both the remand and convicted prisoners spend nearly the whole day in their cells. The hall in front of two cells occupied by the convicts is separated from the rest of the building by bars and they use the hallway as a day room. The convicts told us that the heating in winter was poor and that they often did not have any hot water. The exercise yard is very small. It has fitness equipment and an outdoor shower the inmates use to cool themselves in the summer. A call system is in place in this part of the penitentiary; it is activated by pressing a button in the cell, but the convicts say that the guards do not react promptly to their calls.

The living conditions in the medium security ward are much better although the cells are shared by greater numbers of convicts. The cells are brighter, have much better ventilation and the inmates spend the better part of the day outside the cells. Their exercise yard is much larger and the ward has a large day room. The hygiene in this part of the prison is better as well.

8.2. Treatment of Inmates

The convicts we interviewed during this visit also mostly complained about the lack of recreational opportunities and purposeful activities (in the high security ward). They also complained about the categorisation and alleged that the counsellors were not doing their work well, that their communication with the prisoners was poor and that they rarely visited them (around once a month). The prison administration, on the other hand, told us that the counsellors visited the convicts every fortnight.

We heard no grievances about how disciplinary proceedings were being conducted. The convicts we talked to were aware of their rights and the House Rules, which are visibly displayed in the establishment, but not in the cells as well.

The convicts in the medium and minimum security wards spend more than the minimum two hours a day in open air prescribed by the PSEA. The ones in the high security ward usually spend one hour in the morning and one hour in the afternoon outdoors.

We heard no complaints about the realisation of the right to contacts with the outside world. Telephones exist in the prison and the prisoners are allowed to send and receive letters and packages. The PSEA provisions on the frequency and duration of the visits are abided by. Most convicts, practically all of those in the medium and minimum security wards, are granted privileges and spend their weekends and holidays outside prison.

A total of 71 convicts in the medium and minimum security wards work, mostly in the prison kitchen, garage, wood workshop and the farm. The convicts in the high security ward are not given the opportunity to work. The lack of planned and purposeful activities, which they could take part in, is the chief shortcoming of their correctional programme.

8.3 Safety and Security

There have been no escapes from the high security ward recently, but convicts in the medium security ward have been known to leave the prison grounds or fail to return from their weekend visits home. In 2010 and the first half of 2011 (until our visit), one prisoner strayed from the prison grounds, nine inmates failed to return to prison after the weekend visits and 12 returned late.

There has been inter-prisoner violence in this prison (21 assaults in 2010 and 2011) and the offenders have been punished. Cases of violence between convicts are resolved by separating them and conducting disciplinary measures against offenders. Searches and inspections of the facilities and convicts are frequent and the guards have on occasion found cell phones and shivs. Both the prison administration and the convicts say that there are neither informal groups nor an inmate hierarchy in this establishment.

8.4. Health Care

The health care unit comprises a full-time general practitioner and two medical technicians. All the vacancies envisaged by the organisational structure and staffing plan enactment are filled. A psychiatrist has been

contracted to visit the establishment once a month. During our first visit, he used to visit the prison once a week.

The main surgery is located in the high security ward and another smaller auxiliary surgery is located in the medium security ward. The health care unit occupies two offices in the high security ward, one for check-ups and the other in which the medications and medical equipment are kept. Both are well furnished, spacious and neat. Compared to other institutions of similar size, the surgery is well equipped, with a desk for the doctor, an examination bed, a steriliser, an ECG, oxygen bottle, an Ambu Bag, two blood sugar measurement devices, two thermometers, an inhalator and an otoscope. The medicine cabinet is also well stocked with medications, but the doctor told us that the unit was often short of medications because of the grave difficulties it faces in procuring them.

The health staff often has to work overtime, the doctor usually puts in 10 hours and the technicians put in around 15 hours of overtime every month (due to the workload, off duty interventions and the working hours of the psychiatrist, who comes to the prison in the afternoons and spends around three hours seeing patients).

All convicted prisoners are examined by the doctor on admission, either immediately, or, if they arrive during the weekend, the next workday.

Like in other penitentiaries, doctor's appointments are scheduled through the guards. The requests are not prioritised and all those who seek an appointment are examined. When he is off duty, the doctor consults with the guards on any emergencies by phone. Situations in which the guards have to assess whether an urgent medical intervention is necessary are thus minimised but cannot be totally ruled out. Furthermore, it is more difficult to properly assess the patient's condition over the phone and it would be more propitious if the paramedics were called in such situations. Convicts are examined in the absence and outside the earshot of the guards. The doctor visits convicted referred to solitary confinement every day.

The prisoners have unhindered access to the civilian health institutions, with which the prison cooperates well. A technician escorts inmates transferred to civilian health institutions, but the vehicle transporting them lacks the necessary equipment and the physical presence of the health staff does not always suffice if the patient is in need of urgent medical aid.

Inmates pay for all but urgent dental services, which are provided at the local health centre. The unit keeps medical files on all convicts, which are regularly updated. It does not conduct comprehensive medical check-ups of the convicts. The prison kitchen is in a position to provide special dietary arrangements on doctor's orders. With its variety of equipment, the health unit can undertake a relatively broad spectrum of diagnostic and therapeutic procedures (ECG, inhalation, et al). The medicine cabinet and the distribution of medications are properly supervised, although the health staff told us that there were problems with the distribution of pre-prepared dosages in the afternoons and evenings, when it is off, and the medications are distributed by the guards – some convicts refuse to take their medicine at such times.

The erstwhile inpatient room is still used to accommodate remand prisoners. Therefore, sick convicts are not segregated and have to share room with the healthy ones. Furthermore, the former inpatient room is inappropriate, as it is furnished with bunk beds.

The medical staff is not trained in conducting psychotherapy or work therapy. The convicts are told about their state of health; such information is relayed to their families if necessary and with their consent. Furthermore, persons deprived of liberty are entitled to refuse treatment; so far, treatment has mostly been refused by inmates who have been prescribed psycho-pharmaceuticals.

The medical staff performs daily checks of the quality of the food, hygiene, sanitary facilities, ventilation and heating and drafts reports only when it identifies any irregularities. The kitchen still undergoes a thorough cleaning every month as ordered by the doctor. The convicts are provided with personal hygiene items from the storeroom if they cannot afford them. The medical staff is able to recognise the warning signs of suicide and reacts by isolating the convict in a separate cell and seeking psychiatric assistance. All complaints of abuse by the inmates are reported to the staff administration. The doctor always examines inmates subjected to means of coercion and prior to release.

The health unit takes part in drafting reports asking for alternatives to imprisonment whenever it is of the view that continued imprisonment of an inmate would be detrimental.

The staff has not undergone special training in prison pathology.

8.5. Staff

Staff relations have been seriously strained for two years now, since a guard was suspended for smuggling in a cell phone for a convict, which led some of the guards to petition for the dismissal of the chief of security. It was later established that the chief of security had acted properly and conscientiously, but he was nevertheless transferred to the Leskovac District Prison. The governor requested the transfer of some of the guards to other prisons because of the disrupted staff relations; this, indeed, happened, but they were subsequently reassigned to the Zaječar District Prison.

The guard unit has 32 staff, i.e. it lacks three guards under the current staffing plan. Both the administration and the guards say that there they need more staff to maintain safety and security in the establishment and a request has been filed to increase the number of the guards to 48. The security equipment has been upgraded (a metal detector was installed and the prison will soon be fully covered by video surveillance), but further investments in equipment, above all transportation vehicles, are needed.

The counsellors unit is staffed with three counsellors but the prison needs to recruit a social worker as well.

8.6. Recommendations

As noted in the introduction, the installation of a ventilation system in the high security ward is the top priority of this establishment. Segregating the smokers from the non-smokers was a commendable move, but has not resolved the problem. Until the ventilation system is installed, it would be better to act fully in accordance with the law and prohibit smoking indoors, because having inmates spend all day in smoke-filled premises in this ward is truly inhuman. Furthermore, the common bathroom on the 1st floor of this ward is in extremely bad shape and is in dire need of renovation and, thereafter, much better hygiene maintenance. If the convicts' allegations of the heating and hot water problems are true, they, too, should be eliminated as soon as possible.

The lack of recreational opportunities, i.e. lack of activities offered to prisoners in the high security ward, substantially undermines the correctional endeavours and efforts should be invested to offer these

people any opportunity for entertainment or involvement in cultural or athletic activities. Efforts should also be made to improve the communication between the convicts and the counsellors, as they are now mainly communicating in writing. Given that a number of inmates suffer from addiction diseases, the prison authorities should introduce drug and alcohol abuse programmes.

As far as the work of the health care unit is concerned, it should be provided with adequately furnished inpatient rooms. As already mentioned, it may be worth considering changing the way the doctor has been working. If the paramedics were called in for all medical interventions outside his working hours, there would be no risk of the doctor misdiagnosing the patient on the basis of a telephone conversation with the guards; furthermore, he would not need to work long overtime hours and would be able to rest when he is off. It is instrumental that the prison health unit always has the medications it needs on stock and does not have to interrupt the patients' therapies.

The health staff needs to be trained in prison pathology and the prison staff in contact with the inmates (the guards and counsellors) need to undergo training enabling them to recognise signs of psychiatric disorders early on.

9. NEGOTIN DISTRICT PRISON

Time of visit: June 2011

Time of previous visit: September 2009

Number of inmates at time of visit: 36 remand prisoners and 14 convicts (50 in total)

Gender breakdown: all males

9.1. Material Conditions

The Negotin District Prison, located very close to the centre of town, has been categorised as a medium security prison and is of very small capacity – it can accommodate up to 70 prisoners. Most of the prison is used to house remand prisoners. That section of the prison comprises eight six-bed cells and one solitary confinement cell. The hygiene in this part of the prison is satisfactory, but it is very stuffy. A new, spacious, well-ventilated and clean bathroom was built in it between our visits and the renovation of the hallway in the remand ward was under way at the time of our visit.

The criminal and misdemeanour convicts are kept in the building abutting the prison yard used as the exercise yard. The building also houses the kitchen and cafeteria, as well as the counsellors' offices. The cell in which convicts under maximum security are held was renovated between the two visits. Furthermore, the prison replaced 40 beds and mattresses in the meantime (the mattresses we saw during our first visit were in an extremely poor condition) and bought new cabinets in which the convicts can keep their personal belongings.

According to the governor, lack of special transportation vehicles (Black Marias) is the chief problem the prison faces. The prison's car pool currently comprises one large Black Maria and two passenger vehicles. The prison governor told us that the prison was in need of another, smaller Black Maria.

9.2. Treatment of Inmates

We heard no allegations of physical or psychological abuse during this visit either. The convicts say that they are decently treated by the prison administration and staff. Several convicts again complained about the quality of health care. They claimed that the doctor did not devote enough time to the convicts and that his communication with them left a lot to be desired.

There were still no problems regarding the realisation of the inmates' rights guaranteed under the PSEA. Legal provisions on time spent outdoors, visitation and correspondence are abided by. The convicts are aware of their rights and the prison units' work procedures.

The number of pronounced disciplinary measures remained small. Fewer than ten disciplinary offences, most of them caused by abuse of privileges, were recorded in the last two years.

Means of coercion were not used at all in the last two years.

9.3. Safety and Security

No one tried to escape, commit murder or suicide in the past three years. The last time a prisoner strayed from the prison grounds was in 2009, but he was soon found and brought back to the prison. Inter-prisoner violence is rare. No assaults on prison staff occurred in the past two years.

Both the administration and the convicts say that there are no informal groups or any hierarchy among the remanded and convicted prisoners, which is not surprising given the size of the establishment.

The number of staff working in shifts did not change in the past two years – four guards are on duty during the day shift and three during the night shift. Policemen also stand guard when they use the prison to hold suspects in custody, but this happens extremely rarely.

9.4. Health Care

The health care unit comprises of a part-time doctor and a nurse. The doctor visits the prison three times a week and spends an hour

examining the prisoners. A psychiatrist also visits the prison three times a week. The prison recently received the go-ahead to hire a doctor and expectations are that the recruitment procedure will be completed soon. All specialist examinations are conducted in civilian health institutions. The doctor frequently refers his patients to them for such examinations.

The room used as the surgery is inadequately equipped. It has only an examination bed, a pressure measurement device and a thermometer, nothing else, i.e. nothing has changed since our last visit. This comes as no surprise in view of the size of the establishment and lack of room in it.

Check-ups on admission are conducted within 24 hours, except when the inmates arrive during the weekend or a holiday, when they are examined on the first workday. The doctor tells the new inmates he is examining how they can access health care, but they do not receive any information regarding hygiene in the facility or infectious diseases. Doctor's appointments are booked through the guards or the nurse, if she is in, and the doctor examines the patients the next time he comes. The paramedics are called if an inmate is in need of an urgent medical intervention. The check-ups in the prison surgery are still mostly attended by the prison guards. We would like to note that the examinations should be conducted in the absence of non-medical staff, unless the safety and security of the medical staff or the patient would thus be at risk.

When necessary, the inmates are referred to civilian health institutions, which do not have any problems with admitting them. The nurse now always accompanies prisoners transported to a civilian institution for a check-up or treatment. This had not been the case during our first visit.

The prisoners in need of a dentist are always taken to see one in a civilian institution.

The prison keeps personal medical files of all convicts and regularly updates them. The inmates do not undergo comprehensive annual checkups, which are unnecessary given the small number of convicts. Although none of the convicts have been kept in solitary confinement for quite a long time (over two years), the governor told us that the doctor was aware of his responsibility to visit a convict in solitary confinement every day and to certify that a convict was fit to sustain this disciplinary penalty prior to his referral, as provided for by the PSEA. The nurse was unaware of this obligation of the doctor.

The prison kitchen is in a position to provide specific dietary arrangements for the remand and convicted prisoners on doctor's orders.

The doctor looks after the medicine cabinet and issues the medications. He also supervises the quality of the food, the prison hygiene, washroom facilities, ventilation and heating. The guards distribute the prepared therapies to the inmates when the medical staff is not in.

The establishment does not have a psychologist on staff.

A number of inmates have Hepatitis C. The prison does not have any inmates registered as drug addicts or HIV positive, and has not registered any new cases of tuberculosis or prisoners who have sustained injuries at work or in clashes. There have also been no cases of rape, self-harm, attempted or successful suicides or deaths. The inmates can receive the methadone therapy, but only if they have commenced it prior to arrival. The prison doctor does not prescribe it.

Persons deprived of liberty are not given information on contagious diseases in writing nor does the establishment organise educational sessions on contagious diseases.

None of the staff have undergone specific training in the early recognition of suicidal tendencies and the medical staff has not received specific training in prison pathology.

9.5. Staff

The prison employs 28 people, two on fixed term contracts. Twenty people work in the guard unit. The prison has one counsellor and one lawyer. The inter-staff relations and communication are very good.

9.6. Recommendations

Our impression that the inmates are treated well and that their legally guaranteed rights are respected was reaffirmed during our second visit and we hope that these good practices continue.

One of the main shortcomings identified during our first visit was addressed by the purchase of new mattresses. Lack of fresh air and mustiness in the remand ward remains the only critical problem regarding the material conditions in the prison that needs to be addressed.

We would like to reiterate that the prison should ensure respect of the privacy of the patients during their check-ups. This can be achieved by ensuring that non-medical staff (guards) do not attend the examinations unless there are reasonable grounds to believe that the inmate seeing the doctor may hurt himself or the medical staff.

Furthermore, the prisoners should be regularly informed about contagious diseases. All patients who want to receive the methadone therapy should be enabled to do so, regardless of whether they had received it prior to referral to this prison. The patients should be given the opportunity to take a decision on the therapy after consultations with the psychiatrist. Given that a psychiatrist visits the establishment on a regular basis, this should not pose a much too great a problem.

The medical staff conducting the examinations in the prison need to be trained in prison pathology and the prison staff in general should be provided with training in psychiatry that would allow them to recognise psychiatric disorders and suicidal tendencies among the convicts at an early stage.

10. SMEDEREVO DISTRICT PRISON

Time of visit: June 2011

Time of previous visit: April 2010

Number of inmates at time of visit: 80 remand prisoners and 44 convicts (124 in total)

Gender breakdown: males

10.1. Material Conditions

The Smederevo District Prison is located in the very heart of the city, right next to the police station and courthouse. Apart from the obvious advantages, reflected in easier cooperation with the police and simple transfers of the remand and convicted prisoners to trials in the local court, there are also serious disadvantages arising from the location of the prison – lack of space and hardly any possibility to expand its capacities or adapt it. One of the chief problems, which we noted during our first visit as well, is that the prison's exercise yard is very small.

Apart from the main building in the centre of the city, the prison also has a farm. The produce grown on it is used to feed the prisoners, while the surplus is sold to cover other prison expenses.

As opposed to most other district prisons in Serbia, this prison does not have any spare cells in which the police can hold suspects in custody.

The facilities in which the inmates spend time are in good condition, well furnished and maintained. They have been adapted and each cell has its toilet/wash basin and a call system by which the inmates can reach the guards in case of an emergency. Smoking is not allowed in these premises in accordance with the law, except in designated smoking rooms.

The prison administration has done its utmost and has largely succeeded in ensuring good living conditions in this establishment. Lack

of space, particularly for exercise and recreation, remains an outstanding problem.

As far as equipment is concerned, the prison lacks special vehicles for the transportation of prisoners. It currently has two such vehicles, but one is inoperable.

The canteen at which the prisoners can buy additional food is not as well stocked or affordable as it used to be before the introduction of the centralised procurement system (under which products for all penitentiaries are ordered via the Penal Sanctions Enforcement Directorate).

10.2. Treatment of Inmates

None of the convicts we talked to made any allegations about any physical or psychological abuse. The convicts say that the prison guards and staff treat them well. The representatives of the administration hold meetings with the convicts once a week to discuss the ongoing problems in the establishment and hear about their grievances. This is an extremely commendable practice and could probably be replicated in all establishments with small convict populations.

Some of the convicts we talked to complained that they were allowed to make telephone calls only between 5 and 8 pm and that they were thus unable to get in touch with institutions, which work until 3 pm. We heard no complaints about other forms of communication with the outside world, including contacts with their families.

The convicts we talked to told us that the food was not bad, but that the menu could be more diversified.

Between three and four disciplinary proceedings are conducted every month, mostly over the prisoners' abuse of privileges. No one has been punished by solitary confinement recently.

The convicts spend one hour a day outdoors although Article 68 of the PSEA lays down that they should spend at least two hours a day in fresh air. Elderly inmates and those suffering from asthma are provided with the chance to spend more time outside. The establishment has no exercise equipment in the yard or recreation fields. Fortunately, over 50% of the convicts are engaged in some form of work at the farm, which partly makes up for the lack of opportunities for recreation.

10.3. Safety and Security

There have been no escape attempts, assaults on the staff, suicides or self-injuries in the past few years. The administration and convicts told us that the influence of informal groups in the establishment is not pronounced. The convicts say that there are no serious inter-personal conflicts and that the staff is capable of ensuring the safety of all inmates, although the guard unit is understaffed and overworked. The prison plans to extend the video surveillance system to cover not only the cells and the halls but the other premises occupied by the prisoners as well. The prison also has a cell phone detector and is planning on buying a package scanner.

10.4. Health Care

The health care unit is staffed by a part-time doctor and a full-time medical technician. The doctor is in twice a week, from 8 am to 3:30 pm. The prison organisational structure and staffing plan envisages the employment of a full-time doctor and expectations are that the part-time doctor will soon start working full time. According to the staff, the prison should hire another medical technician, who would work in the afternoons.

One small room has been adapted to serve as the surgery. It is, however, modestly equipped, only with pressure and glucose measurement devices. We saw damp on the walls of the surgery, although the staff emphasised that they are painted every six months. The establishment does not have an inpatient room, but the administration told us that it is planning on renovating and adapting rooms, which will be used for inpatient treatment.

All remand and convicted prisoners undergo medical examinations on admission and are told about how the health care unit operates. The prisoners schedule their appointments with the doctor on Mondays and Thursdays through the guards and are examined the next time the doctor is in, except in emergencies, when the inmates are immediately examined. The specialist examinations are conducted at the St. Luka Hospital in Smederevo. Psychiatric care is provided by the local health centre. Cooperation with the civilian institutions is at a satisfactory level.

The medical technician accompanies prisoners being transferred to the civilian health institutions. The inmates are examined in the absence of the guards (which is a step forward given that the guards attended the check-ups during our first visit). The inmates are not given annual comprehensive check-ups.

The prison is in a position to provide special dietary arrangements on doctor's orders. As already mentioned, there are no conditions for inpatient treatment. The medications are given to the inmates by the medical technician, who prepares in advance the doses the guards give the ill prisoners when he is not in. This practice, of course, could be improved.

The establishment does not have a psychologist on staff.

The patients have access to all the information about their health, treatment and prescribed medications. They have to consent to treatment and are always free to refuse it.

The prison staff told us that the prisoners were taken to the civilian health institution to have their teeth fixed or treated and in emergencies. The convicts we talked to, however, told us that tooth extraction was the only dentistry service available to them.

The medications are bought at a local pharmacy once a week and kept under lock in the surgery.

None of the inmates incarcerated in this prison at the time of our visit were on the methadone therapy. The last prisoner on this therapy was released last year. The prisoners are regularly vaccinated against hepatitis. Brochures with information on contagious diseases are disseminated to the prisoners. The medical and other staff have not been trained to recognise suicidal tendencies or in prison pathology.

The health care unit has not recorded any cases of inter-prisoner violence. Inmates subjected to means of coercion are always examined by the doctor, who re-examines them after 12 i.e. 24 hours as well.

10.5. Staff

The prison has 37 staff members. Twenty-six of them work in the guard unit, i.e. around 20 guards work actively when one takes into

account those on vacations, absences, sick leaves. The administration is of the view that the unit should optimally have 33 guards.

10.6. Recommendations

The Smederevo District Prison has done a lot to improve the living conditions of persons deprived of liberty. The cells and premises that have been renovated relatively recently are in good condition and just need to remain well-kept.

Unfortunately, the lack of space for recreation is difficult to resolve and poses a serious problem, particularly for remand prisoners and the convicts in the high security ward, who do not have the opportunity to work. It would be useful if several exercise devices could be installed for them. The prison should also enable convicts access to telephones in the morning hours, so that they can contact institutions that do not work in the afternoons if they need to.

The greatest improvements could be made in the area of health care. The prison needs to have a full-time doctor on staff and would benefit from hiring one more medical technician. Furthermore, the surgery should be expanded (given the design of the building, it would be best to move it to a bigger room) and equipped by the appropriate medical equipment.

As noted, the fact that the medical examinations are now conducted in the absence of the guards represents a step forward because such practice not only protects the privacy of the inmates but also helps prevent abuse -- the inmates are more likely to report any abuse out of the guards' earshot. The health care unit has also commendably started re-examining convicts subjected to means of coercion, which had not been the case during our first visit.

Dentistry services should not be limited just to tooth extraction, as the convicts allege.

The medical staff should be trained in prison pathology and all prison staff should undergo at least basic psychiatric training that would enable them to recognise psychiatric disorders and suicidal tendencies at an early stage.

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