



Torture and Ill-treatment in Serbia - Alternative report to the UN Committee against Torture

1. INTRODUCTION

The present report is written by a coalition of Serbian NGOs following a process where the respective organisations contributed with sections as per their area of expertise. It covers the following main issue areas: criminalisation, non-refoulement, torture and ill-treatment in detention, investigation and prosecution, reparation and rehabilitation, human trafficking, the situation in mental health facilities, access to health care for persons with HIV/AIDS in detention, and torture and ill-treatment of women. The report is structured thematically with an indication of how different sections relate to UNCAT provisions and questions from the LOIPR.

The report writing process has been coordinated by International Aid Network (IAN) with technical support from the International Rehabilitation Council for Torture Victims (IRCT).

Organisations involved in the drafting of the report:

- AS - Center for the Empowerment Youth of people who are living with HIV and AIDS
- ASTRA - Anti Trafficking Action
- Autonomous Women's center
- Belgrade Centre for Human Rights
- Committee for Human Rights, Leskovac
- Group 484
- International Aid Network

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2. CRIMINALISATION OF TORTURE AND ILL-TREATMENT

Articles 1 and 4 and LOIPR question 1

2.a. Issue summary

The Criminal Code of the Republic of Serbia (“Official Gazette of Republic of Serbia”, nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014) criminalises ill-treatment under the criminal offences extortion of statements (Art. 136) and ill-treatment and torture (Art. 137). Since the latest CAT session, amendments to the Criminal Code have not succeeded in properly defining and criminalising torture and ill-treatment as required by Articles 1 and 4 of UN Convention against Torture (UNCAT).

1. The definition of torture under Art. 137, para. 2 of the criminal code is considerably more encompassing than the definition from the UNCAT, so the perpetrator of torture can be anyone and not only an official or an official in discharge of duty, or based on an explicit instruction or agreement of the official;
2. A qualified form of ill-treatment and torture, when the perpetrator is an official (Art. 137, para. 2, in conjunction with para. 3) does not essentially differ from the criminal offence of extortion of statements, which leads to the question of the criteria based on which the public prosecutor decides for which of the two offences he or she will prosecute the accused. It is important to note that the graver form of extortion is punishable by 2 to 10 years of imprisonment, whereas ill-treatment and torture under Art. 137, para.2 in conjunction with Paragraph 3 is punishable by 1 to 8 years of imprisonment.² This overlap creates confusion and it would be far easier to establish a single criminal offence of “Torture” which will include extortion of confession undertaken by a state official. Also, it will secure equal treatment, approach and practice towards the same criminal acts.
3. The penalties prescribed have remained the same, so the gravest punishment that may be pronounced for the act of torture is 10 years of imprisonment (Art. 136, para. 2).
4. The statutes of limitation have remained the same, and in the period from 2009 to the day of submission of the state report, the authors of this report have come into possession of several rulings which have suspended criminal proceedings against Ministry of Interior Affairs (MIA) police officials due to the absolute lapse of the statute of limitations: K 8627/12 (Basic Court in Belgrade), K 1339/11 (Basic Court in Stara Pazova) and K 347/10 (Basic Court in Pancevo).³

Art. 136, para.1:

“Whoever acting in an official capacity uses force or threat or other inadmissible means or inadmissible manner with the intent to extort a confession or another statement from an accused, a witness, an expert witness or other person, shall be punished with imprisonment of three months to five years.”

Art. 137, para.2 and para. 3:

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

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

1 CAT/C/FRA/CO/3, para. 5

2 A 54/44, para. 44

3 Data obtained from the Belgrade Centre for Human Rights database

2.b. Recommendations

1. Amend the Criminal Code with provisions whereby instead of ill-treatment and torture (Art. 137) and extortion of statement (Art. 136) a separate criminal offence of Torture is introduced, which would be defined in the same manner envisaged by Article 1 of the UN Convention Against Torture, i.e. where the perpetrator of the crime will solely be a person acting in their official capacity. The minimum penalty for the newly established offence would be 6, and the maximum penalty 20 years of imprisonment.
2. Abolish statutory limitations for the crime of torture.⁴
3. Reinstate all criminal and civil proceedings that have been discontinued due to statutes of limitations, including K 8627/12 (Basic Court in Belgrade), K 1339/11 (Basic Court in Stara Pazova) and K 347/10 (Basic Court in Pancevo), which were conducted against MIA police officials.

4 A 54/44, para. 44.

3. TREATMENT OF ASYLUM SEEKERS AND IRREGULAR MIGRANTS

Article 3 and LOIPR questions 9-11

3.a. Asylum seekers

3.a.1. Statistics⁵

Since the beginning of the implementation of the Law on Asylum, 28,285 people have expressed the intention of seeking asylum, as follows:

Year	Registered individuals (expressed intention)
2008.	77
2009.	275
2010.	522
2011.	3,132
2012.	2,723
2013.	5,066
2014.	16,490
Total	28,285

During that period only 6 persons have been recognized as refugee and 12 have been granted subsidiary protection.

Between 1 January and 31 December 2014,⁶ 16,490 expressed the intention to seek asylum in the Republic of Serbia. In the same period, there were 1,563 unaccompanied minors, among whom 1,478 were boys and 85 girls.

Country of origin	Registered individuals (expressed intention)
Syria	9,701
Afghanistan	3,017
Eritrea	796
Somalia	707
Pakistan	288
Iraq	273
Sudan	231
Palestine	187
Nigeria	181
Mali	171
Ghana	157
Bangladesh	108
Iran	85
Congo	68
The Gambia	58
Cameroon	53
Ivory Coast	48

⁵ Data obtained from Asylum Office.

⁶ Here, statistics from 2014 are presented, as during that year the number of recorded intentions to seek asylum is the highest when compared to previous years.

DR Congo	31
Sierra Leone	30
Comoros	30
Yemen	21
Guinea	24
Senegal	25
India	21
Rwanda	18
Algeria and Libya	16
Tunisia	10
Morocco and Mauritania	7
Egypt	5
Burkina Faso	2
Togo and Uganda	14
Cuba	13
Central African Republic	9
Ukraine	7
Sri Lanka and Ethiopia	6
Liberia	4
Macedonia and Saudi Arabia	3
France	2
The Republic of South Africa	2
Chad, Russia, Tanzania, Benin, Bosnia and Herzegovina, Nigeria, the Czech Republic, Myanmar and Albania each	1

According to the records of the Ministry of Internal Affairs, there were 8 expressions of the intention to seek asylum at the Nikola Tesla Airport, whereas, according to the records of the Belgrade Centre for Human Rights, 12 persons expressed the intention to seek asylum at the airport. At the Aliens Reception Centre in Padinska Skela, 24 intentions were expressed. At the regional police departments, the intention to seek asylum was expressed by 15,739 aliens, and 715 at the border.

Where?	No. of registered individuals (expressed intention)
Airport Nikola Tesla	8
Shelter for foreigners "Padinska Skela"	24
At the border	715
The regional police departments	15,739

3.a.2. Asylum procedure

The asylum procedure in Serbia is carried out in two phases. The first includes the expression of the intention to seek asylum, keeping records, registration, the submission of asylum application, the interview and the first-instance decision. The second is carried out following an appeal against the first-instance decision. A foreigner can express the intention to seek asylum at the border or near the border, in which case the intention is recorded by the border police, or within the territory of Serbia in which case the intention is recorded by the police officers of the Department for Foreigners. All other actions of first-instance procedure are conducted by the Asylum Office. The Asylum Office was formally established at the beginning of 2015, and, according to the Plan of Systematization of Work Positions, it will have 29 officers.⁷ However, it is important to emphasize that only 7 officers are currently working on status determination issues.⁸

The second-instance procedure is carried out by the Asylum Commission that was established in 2009 by a Decision of the Government as an independent body of the Government of Serbia. If the Commission adopts a decision rejecting the appeal, the asylum seeker may file a complaint with the Administrative Court.

It is obvious that the capacities of the Asylum Office are insufficient to allow all asylum seekers to submit an asylum application, which in practice leads to long anticipation of the beginning of the asylum procedure and eventually to a withdrawal from the procedure and a risk of being arrested by the police for their illegal stay or transit in Serbia. This is because a majority of asylum seekers entered Serbia illegally without documents that can prove their identity, and after the withdrawal from the procedure Serbian authorities consider these people illegal migrants and are prone to prosecute them for illegally entry and stay in Serbia, which eventually leads towards the procedure of forced removal and potential refoulement (mainly because of the shortcomings in the forced removal procedure).⁹

Access to the asylum procedure

According to the statistics of the Ministry of Internal Affairs, 15,739 aliens expressed the intention to seek asylum in regional police administrations, whereas in the border belt, 715 aliens expressed the intention to seek asylum. Although a considerable number of certificates were issued over the course of 2014, there remains a risk that police officers in certain situations will not recognize the intention to seek asylum, both due to communication problems and due to an erroneous interpretation of existing regulations.

This risk is especially pronounced in situations where police officers deprive an alien of liberty on suspicion of unlawful entry, stay or transit through the Republic of Serbia. Police officers usually communicate with aliens in the English language.¹⁰ There is nevertheless a reasonable assumption that it will not always be possible for aliens deprived of liberty to speak English well enough to be able to receive all the necessary information from the police officers or to allow their status to be determined adequately (as asylum seekers or irregular migrants).

On the other hand, problems pertaining to access to the asylum procedure also exist in certain police administrations and in Regional Centers of the Border Police (RCBP), where officers in some cases interpret the expression of the intention to seek asylum in a very restrictive manner. For instance, police officers in certain police administrations will issue a certificate of the intention to seek asylum

7 Draft action plan for the chapter 24 (http://www.mup.gov.rs/cms_cir/oglasni.nsf/Akcioni%20plan%20za%20poglavlje%2024%20od%2023.%20januara%202015.pdf)

8 From the period of 2008. until February 2015. the actions from the jurisdiction of Asylum office were carried out by the Department for Asylum.

9 About the procedure of forced removal see more in paragraphs 3.b.1 and 3.b.3, pages 6-8.

10 The data was obtained in the field in the course of the regular activities of the lawyers of Group 484 and the Belgrade Centre for Human Rights.

having been expressed only to those aliens who explicitly say “asylum”.¹¹ This was also the practice in previous years.¹² Also, police officers of the Kanjiža police station believe that aliens who were returned from Hungary to Serbia, in accordance with the Agreement between Serbia and the EC (European Community) on the readmission of persons whose stay is unlawful,¹³ do not have the right to seek asylum in Serbia.¹⁴ Thus, by implementing the above agreement, aliens who were returned to Serbia may be denied access to the asylum procedure, on account of which there is a risk of a violation of the principle of non-refoulement. These people will be prosecuted for the misdemeanour of illegal border crossing, after which the court could impose the decision on forced expulsion. Furthermore, representatives of non-governmental organizations, who deal with providing legal aid to asylum seekers, have in the past several years received complaints from asylum seekers that the police station in Loznica does not issue certificates to aliens who express the intention to seek asylum.

Aliens arriving in the Nikola Tesla Airport in Belgrade who do not meet the conditions to enter Serbia and who are waiting to be forcibly removed are put up at special premises in the transit zone of the airport by members of the Border Police Station in which they stay until they are forcibly removed¹⁵ or until such a time as they are allowed entry into the Republic of Serbia if they have expressed the intention to seek asylum. Lawyers of the Belgrade Centre for Human Rights found out in communication with the employees of the Belgrade border police station that border police officers do not consider detaining aliens at the Nikola Tesla Airport as deprivation of liberty, i.e. they do not pass a formal decision on deprivation of liberty.¹⁶ Since alien accommodation in the premises of the transit zone is not interpreted as a deprivation of liberty, aliens are denied basic rights, such as the right to a lawyer, informing a third person about the arrest and the right to a medical examination.

The forcible removal of an alien from the airport is also conducted without any procedure. There is no procedure in which the alien can make a declaration about his/her forcible removal, and there is consequently no possibility of refuting the “informal” decision on return to a third country or even the country of origin.

The BCHR was on two occasions forced to submit a request for interim measures to the European Court of Human Rights in order to prevent a return to Greece in one case, and a return to the country of origin (Somalia) in the other. In both cases, MIA staff did not allow the lawyers of the Belgrade Centre to access the transit zone in order to provide legal aid to aliens who had expressed the intention to seek asylum in the transit zone. Both were indisputable cases of refugees who were threatened with political persecution in the countries of origin.¹⁷

11 This, for instance, is the practice of the Prijepolje police administration (information obtained during NPM visit in Septembre 2014)

12 See Right to Asylum 2012, p. 19.

13 Official Gazette of the Republic of Serbia– International Agreements, no. 103/2007.

14 Such information was obtained by the Belgrade Centre for Human Rights during the NPM (National Preventive Mechanism) visit to police station Kanjiža on 19 September 2014.

15 Art. 46, para. 2 of the Law on Protection of the State Border: “Persons who do not meet the conditions for entering the territory of the Republic of Serbia shall be returned to the point of departure at the expense of the airline company from paragraph 1 of this Article.”

16 See more in the case *Amuur v. France*, petition number 19776/92.

17 *Ahmed Ismail (Shiine Culay) v. Serbia* (Application no. 53622/14) and *P.S. v. Serbia* (Application no. 90877/13).

Launching the asylum procedure and the capacities of the Asylum Office

Over the course of 2014, the Asylum Office managed its cases as follows:

Registered cases	1,350
Asylum applications submitted	388
Interviews conducted	18
Suspended cases	307
Rejected cases	12
Subsidiary protection	5
Asylum granted	1
No. of appeals	13
No. of annulled first instance decisions	2
No. of dismissed appeals	7

According to the Law on Asylum, the procedure for granting asylum shall be initiated by submitting an asylum application to an authorized officer of the Asylum Office on a prescribed form, within 15 days of the day of registration. However, although the Law on Asylum envisages that proceedings are initiated when the alien submits an application for asylum, because it also prescribes the necessary presence of an authorized officer of the Asylum Office, in practice the application is submitted when the Asylum Office so determines, i.e. when an authorized official of the Asylum Office goes to one of the centers, thereby making it possible for the alien to submit an application.

The statistics presented and the existing practice make it clear that the capacity of the Asylum Office is insufficient to conduct the asylum procedure for all aliens who expressed the intention to seek asylum in Serbia. There are examples of aliens waiting for up to several months to submit an asylum application. Over the course of 2014, the Asylum Office went a total of three times to the asylum centers in Sjenica and Tutin in order to carry out the official duty of the submission of asylum applications. According to the dates of Belgrade Centre for Human Rights, at the Tutin Asylum Centre, out of the 2,360 accommodated aliens, only 79 were enabled to submit applications for asylum, while at the Sjenica Asylum Centre, 86 aliens submitted applications for asylum out of a total of 2,154 accommodated asylum seekers in 2014. In other words, the asylum seekers accommodated in Tutin and Sjenica have no access to the asylum procedure.

3.a.3. Concept of safe third country

According to Article 2 of the Law on Asylum,¹⁸ “A safe third country shall be understood to mean a country from a list established by the Government, which observes international principles pertaining to the protection of refugees contained in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees (hereinafter referred to as: the Geneva Convention and the Protocol), where an asylum seeker had resided, or through which he/she had passed, immediately before he/she arrived on the territory of the Republic of Serbia and where he/she had an opportunity to submit an asylum application, where he/she would not be subjected to persecution, torture, inhuman or degrading treatment, or sent back to a country where his/her life, safety or freedom would be threatened.” The concept of safe third country is described as a procedural mechanism for the referral of an asylum seeker to another country that is considered to be primarily responsible for assessing his/her asylum application and for which there are grounds to believe that it can be considered safe.¹⁹

¹⁸ Official Gazette of the Republic of Serbia, No. 109/07

¹⁹ “Challenges of the asylum system” Group 484, Belgrade Center for Human Rights, Belgrade Center for Security Policy, Belgrade 2014. pg. 78.

The list of safe third countries was established by a decision of the Government in 2009²⁰ and it has not been modified since. All countries in the region are considered safe third countries and the list includes some countries that, due to grave violations of human rights, should not be considered safe, such as Tunisia, Belarus²¹ and Greece,²² but also Turkey, which has made reservations to the Protocol to the Convention relating to the Status of Refugees of 1967.

In cases where the asylum seeker passed through or came directly from a country which by the Government decision was established as a safe third country,²³ the Asylum Commission, as well as Asylum Office and Administrative court are automatically applying the concept of safe third countries without putting into question the safety of countries on the list. The stand of the Constitutional Court of Serbia is that UNHCR reports contribute to adjusting the conduct of the competent bodies of the Republic of Serbia in the implementation of the Law on Asylum.²⁴ The relevant institutions in the asylum system, are frequently deciding upon asylum claim by applying the concept of safe third country without examining the circumstances of each individual case, i.e. whether a country that is on the list of safe third countries is in fact safe for the particular applicant.²⁵

The Asylum Commission has stated that it had reviewed an official UNHCR document on Turkey (although the reasoning of the Decision does not specify the exact document in question), which said that, despite territorial restrictions in the implementation of the Geneva Convention Concerning the Status of Refugees,²⁶ Turkey nonetheless granted protection to non-European asylum seekers by implementing various national regulations, whereas the UNHCR is actually endeavouring to ensure a solution for the refugees in Turkey, primarily by moving them to other countries.²⁷

3.a.4. Asylum centers

Apart from the asylum centers (further only Center/Centers) in Sjenica and Tutin, currently there are three additional centers: in Banja Koviljaca, Bogovada and Krnjaca, which enables the optimal number of places for accommodation of asylum seekers. Bearing in mind that, of these Centers, only two are of a permanent nature, the ones in Banja Koviljaca and Bogovada, the issue of accommodation capacities for asylum seekers is not resolved systematically. Another observation is that there are no equal conditions in terms of the quality of accommodation in these facilities.

In the period of August of 2012, when there were only two centers for the whole territory of Serbia and when the number of asylum seekers was disproportionately large in relation to the existing accommodation capacity, there were between 90 and 195 people located outside of the Asylum Centre Bogovada on a daily basis. Among them there were people who had expressed the intention to seek asylum, but also people in irregular status. Among foreign citizens who did not have confirmation of the expressed intention and illegally reside on the territory of Serbia, there were those who argued that at the police station in Valjevo they could not obtain the confirmation that they had expressed the intention to seek asylum.²⁸

20 Decision of the Government of the Republic of Serbia on establishing the List of Safe Countries of Origin and Safe Third Countries, ("Official Gazette of the Republic of Serbia", No. 67/2009)

21 Report: Position of asylum seekers in Serbia (January – April, 2012), Belgrade Centre for Human Right

22 During 2011, the European Court of Human Rights, in the case of M.S.S v. Belgium and Greece established that the asylum procedure is inefficient and systematically violates the human rights of asylum seekers. M.S.S. v. Belgium and Greece, Application no. 30 696/09, Grand Chamber judgment of January 21, 2011.

23 The Implementation of this Decision was analysed in detail in The Right to Asylum in the Republic of Serbia 2012, pp. 28 -31 and in The Right to Asylum in the Republic of Serbia 2013, pp. 41 – 43.

24 Decision UŽ 1286/2012 dated 29 March 2012 and Decision UŽ 5331/2012 dated 24 December 2012

25 Challenges of Forced Migrations: Another view of asylum and readmission issues, Group 484, 2013., pg.31.

26 Turkey did not ratify the Protocol Relating to the Status of Refugees of 1967, which means that in Turkey, the Geneva Convention Relating to the Status of Refugees of 1951 is not applied to refugees from non-European countries

27 Decision of the Asylum Commission AŽ 03/14 dated 15 May 2014

28 Challenges of Forced Migrations: Another view of asylum and readmission issues, Group 484, 2013.,pg. 25

3.b. Foreigners

3.b.1. Misdemeanour courts

If the intention to seek asylum is not recognized, the competent authorities initiate misdemeanour proceedings against foreigners for the reason of unlawful entry or unlawful residence on the territory of the Republic of Serbia. Sanctions that are prescribed by this procedure against foreigners are: a prison sentence²⁹ or a fine³⁰. If the convict does not have enough money, the fine is converted into a prison sentence, with 1000 Republic of Serbia RSD corresponding to one day in prison.

Problems in communication also exist in misdemeanour courts, before which proceedings are conducted against aliens for unlawful entry or stay in the territory of the Republic of Serbia. Requests to instigate misdemeanour proceedings are filed precisely by those MoI authorized officers who are not always capable of recognizing the intention to seek asylum due to communication problems. The communication problem then persists before the misdemeanour courts, where on very rare occasions a court-sworn interpreter is engaged for a language spoken by the alien, resulting in a situation where the alien, without any basic procedural safeguards, is imposed a court warning, fined, but also sentenced to prison. Proceedings are also conducted without the possibility of the alien engaging a defence counsel, and if he/she does not understand the English language, also without the possibility of disputing the charges he/she faces. Judgments are delivered in the Serbian language, which makes it impossible for the alien to exercise the right to file an appeal with a higher instance. Such practice creates the risk of an alien intending to seek asylum being penalized for illegal entry into the Republic of Serbia, which is contrary to Article 31 of the Geneva Refugee Convention of 1951, but also the risk of the measure of alien expulsion being imposed on him in the misdemeanour proceedings (Article 65 of the Law on Misdemeanours).

According to the data gathered by Group 484, the intention to seek asylum was recognized in only 5 misdemeanour procedures³¹ during 2014 and consequently we can assume that one of the factors for these statistics could be the inability of misdemeanour judges to recognize the intention to seek asylum.

3.b.2. Quality of accommodation at detention centers and the Shelter for foreigners

If the foreigner is convicted for unlawful crossing of the state border or unlawful presence in the Republic of Serbia to a prison sentence or if his/her fine is converted into a prison sentence, he/she is sent to one of the existing penitentiary-correctional institutions in the territory of Serbia.

The Shelter for foreigners is an institution which accommodates foreigners whose identity cannot be determined, those who don't have a travel document, foreigners who cannot be immediately forcibly returned and asylum seekers if, for any reason provided for by the law, they are subjected to a restriction of the freedom of movement.

Since there are no interpreters among the staff members of the penitentiary- correctional institutions, it is questionable whether foreigners are fully and properly informed of their rights and the procedures for exercising them. Moreover, the Prison Rulebook, which explains in detail the position of any convict at the penitentiary-correctional institution, is not available in any other language apart from Serbian.³²

29 According to the Law on the State Border Protection, ("Official Gazette of the Republic of Serbia", No.20/2015) the prison sentence can be up to 30 days.

30 The amount of fines for unlawful entry or unlawful presence at the territory of Serbia, according to the Law on Foreigners, ("Official Gazette of the Republic of Serbia", No. 97/2008) and Law on the State Border Protection, ("Official Gazette of the Republic of Serbia", No. 20/2015) ranges between 5,000 and 50,000 Republic of Serbia RSD.

31 "Challenges of the asylum system" Group 484, Belgrade Center for Human Rights, Belgrade Center for Security Policy, Belgrade 2014. pg. 35

32 "Challenges of the asylum system" Group 484, 2014, p 40.

According to information of Group 484, there was no case of recognition of the intention to seek asylum of any foreigner at the penitentiary-correctional institutions in Serbia during 2013. This can be the result of the lack of informational brochures about the asylum procedure and the position of the asylum seekers in Serbia, at the penitentiary-correctional institutions, or of the problem in communication between the guards and foreign convicts, or the lack of the ability to identify the intention to seek asylum of the foreign convict by the guards.

Especially concerning is the position of child migrants who are serving prison sentences for reasons of unlawful access or unlawful presence in the territory of Serbia. The fact remains that, in Serbia, there is no formal procedure for determining the age of a person, which is very important from the prospective of misdemeanour responsibility if we bear in mind that, according to the Serbian Law on Misdemeanours, children under the age of 14 are not liable to misdemeanour charges for their unlawful actions.

In 2014, there were cases of families found to have unlawfully accessed or to be unlawfully present in the territory of Serbia being separated, with adult men being sentenced to prison and women with children being left without any protection. During a field visit to the Center for the Development of Social Services (in further text, Center) in Vranje, Group 484 have discovered that this institution, even though it is not in their jurisdiction, is providing shelter for women and children who are irregular migrants in cases of imprisonment of the adult male member of the family. In Serbia, there are no specialized institutions that provide shelter for this vulnerable group, so the practice of the Center in Vranje is based on their personal preference and humane approach.

3.b.3. Removal of foreigners

Forcible removal from the Shelter for foreigners

The decision on termination of residence represents legal grounds for alien removal. The procedure for the removal of aliens from the shelter for foreigners does not fulfil the required conditions and deprives the alien of basic procedural safeguards. Although the decision on termination of residence may be considered as an individual decision, the procedure to pass the decision is unilateral, and is conducted without the presence of an alien to whom the decision concerns. In other words, the alien does not participate in the decision making process. For this reason, it is impossible to establish the individual circumstances of the alien's return to the country of origin or a third country (e.g. Macedonia).³³ The procedures also lack further safeguards such as lack of an interpreter for his/her mother tongue and legal representation from qualified legal representative. Finally, all decisions are passed and written in the Serbian language, which makes it unlikely that an alien will be able to launch an appeal against them. In other words, aliens are denied the right to an effective legal remedy against the decision on their forcible removal.³⁴ In 2014, in this manner people from Syria, Iraq, Afghanistan, Somalia and Pakistan were forcibly removed to Macedonia or Bulgaria.³⁵ These circumstances are particularly worrying if we take in considerations allegations of ill-treatment in Macedonia.³⁶

Expedited procedure of readmission with Macedonia

There is fear the expedited procedure envisaged by the Agreement on Readmission with Macedonia is conducted without passing decisions on termination of residence, i.e. there are no individual decisions for each alien returning to Macedonia. In other words, aliens deprived of liberty are collectively placed

³³ Information obtained during the NPM visit to Shelter for Foreigners in October 2014. See also the Report of the Ombudsperson on monitoring the efficiency of recommendation for improvement the status of illegal migrants and asylum seekers, page 12, available at <http://ombudsman.npm.rs/>.

³⁴ The data was gathered during the activities of Group 484 and the Belgrade Centre for Human Rights.

³⁵ Supra. 38.

³⁶ About the allegations of ill-treatment by Macedonian authorities, see more in "Human stories", pages 8-9.

on the request for admission, which is then forwarded to the competent Macedonian bodies, which decide on the admission. In the procedure, aliens are unable to engage a legal representative, and are not provided the services of an interpreter in their mother tongue. In effect, no formal decision is made, which consequently precludes an alien from having recourse to a legal remedy.

3.b.4. Unaccompanied child migrants

According to article 2 of the Law on Asylum "an unaccompanied minor shall be understood to mean an alien under 18 years of age who was unaccompanied by parents or guardians on his/her arrival to the Republic of Serbia, or who became unaccompanied by parents or guardians after arriving to the Republic of Serbia."³⁷

When an unaccompanied minor is found at the border or within the territory of Serbia police officers have the obligation to immediately call the Center for social work that assigns temporary guardian to the child. After the initial identification, unaccompanied child migrant in company of his temporary guardian is sent to one of the two units for accommodation of foreign minors in Belgrade or Nis. If the child expresses the intention to seek asylum or if the intention is recognized during the initial identification he can be immediately sent in company with his temporary guardian to one of the asylum centers. If he/she is sent to one of the two units for accommodation of foreign minors in Belgrade or Nis, after the reception he/she is granted a second temporary guardian. Later during the stay at the Unit, if the child expresses the intention to seek asylum, he/she is sent into one of the Asylum Centers. If the intention is not expressed nor recognized, the child is kept at the unit until the conditions for his/her return to the county of origin are met.³⁸

In Serbia, there is no formal procedure for determining the age of a person, which is very important from the perspective of all actors that come into contact with minors. Further, many actors who come into contact with minors don't have knowledge of their mother language or have just basic knowledge of English, which is insufficient for a detailed examination of each individual case. If we bear in mind that, according to the Serbian Law on Misdemeanours, children under the age of 14 are not liable to misdemeanour charges for their unlawful actions, there is a risk that children who are under the age of 14 would be misdemeanour charged for his unlawful access or unlawful presence at the territory of Serbia, and that child between the age 14 to 18 would be sentence to prison for unlawful access or unlawful presence at the territory of Serbia.

There is no accommodation capacity for unaccompanied girls in the unit for accommodation of foreign minors in Nis. Bearing in mind the number of unaccompanied girls who expressed the intention to seek asylum in 2014, the need for expanding the existing accommodation capacity is urgent (for male minors in both units total capacity is 22 places).

Having in mind that, in a relatively short period of time, an unaccompanied child migrant is granted three temporary guardians, it is questionable whether each guardian can fully comply with his/her duties.

Staff members of the local Center for social work are usually assigned as temporary guardians, individuals who do not specialise in working with children migrants and who do not have adequate knowledge of the asylum system in Serbia.

³⁷ Official Gazette of the Republic of Serbia, No. 109/07

³⁸ According to Group 484 information, their practice is only established when minor is from neighbouring countries or if legal guardian/parents appear. Further information: Challenges of Forced Migrations: Another view of asylum and readmission issues, Group 484, 2013.

3.b.5. Human stories

Through activities such as legal counselling, monitoring of various institutions and work in the field, the authors of the report had the opportunity to talk to a large number of aliens (asylum seekers and irregular migrants).

In the course of the mentioned activities, the authors of the report received a large number of complaints about the work of the Serbian police. However, a much larger number of complaints concerned the conduct of the police in Greece and Macedonia.

The most serious complaints about the work of the Serbian police were received from irregular migrants with whom we spoke at the old abandoned brickworks at the entrance to Subotica. The aliens said that the police came every day to take their money and mobile phones. They either deprive of liberty or beat up those who do not want to give them their money.³⁹

Several asylum seekers who stayed at asylum centres said that the border police had returned them to Macedonia (some of them even several times). The impression gained from the description of the return procedure is that the deportation was conducted in an informal manner. The aliens are deprived of liberty right after crossing the state border, put on a bus and returned to a certain location, where they were told under threat of weapons that they must return to Macedonia. These events took place at night, without handing over any kind of decision on forcible removal and without cooperation with the Macedonian police, which did not take the aliens over at the Macedonian side.

Among the asylum seekers who stayed at some of the asylum centres, the authors of the report found judgments of misdemeanour courts in which the aliens were sentenced to prison or were imposed fines. The judgments were in the Serbian language, and the aliens who had experience with misdemeanour penalties expressed a series of disconcerting allegations. They described the proceedings as a situation in which they were obliged to sit and keep silent, without the right to make a statement about the facts with which they were being charged. In the proceedings, they did not understand the judge, who in some cases made an address in English, but in some exclusively in the Serbian language. None of the aliens against whom misdemeanour proceedings were instigated said that he/she was provided with an interpreter for a language he/she understands. Some of the aliens said that they had spent five, six or seven days in prison and that they were afraid because they did not know how long they would stay in there. During the visit to the district prison in Subotica and the district prison in Vranje, it was apparent that the aliens who were there had not been appropriately informed about the situation they had found themselves in, how long they would be there and so on. The impression gained is that all the persons who were at the penal-correctional institutions were in a state of uncertainty and in fear of deportation. Notwithstanding this, there were no complaints about the employees in institutions for the enforcement of penal sanctions.

In May 2014, the Institute for Education of Children and Youth in Nis carried out the reception of minor I.M. originating from Syria, aged 14. The minor was escorted to the Institute by the Social Welfare Centre (SWC) Nis and police officer of Police District Nis, Department for Foreigners, Suppressing Illegal Migration and Human trafficking. On the same date, the minor was brought before the Misdemeanour Court in Nis, and he was reprimanded by the court's decision. At the same time, it was determined that the minor should spend 14 days in the Institute, while his brother would be serving a prison sentence in the same period in the Nis prison. On the same day, court interpreter informed the minor about the court decision and explained the conditions under which he would reside within the Institute. Taking into account that the minor could speak only his mother tongue, Institute employees were not in the possibility to communicate with the minor. Following the employees' initiative, a non-governmental organization provided an interpreter who assisted in conducting an interview two days after the initial interview with the court interpreter. Inability to communicate had almost made it impossible to notice important facts for the estimation of minor's needs and deciding upon the

³⁹ The information collected during the activities on the project Networking and Capacity Building for More Effective Migration Policy in Serbia, implemented by Group 484 with support of the Royal Norwegian Embassy in Belgrade and Foundation for an Open Society Serbia and in partnership with the Belgrade Centre for Human Rights and the Belgrade Centre for Security Policy.

manner in which he should be treated, to his best interest. While monitoring this case, the working group also found that after 14 days a police officer came for the minor and, as it was stated in the official note of the Institute: “He has been returned with his adult brother to the Regional Center for the border with Macedonia”. Further treatment of the stated individuals is not known, but under these circumstances, it may be assumed that the regional center grounded its competence for taking over the individuals on the basis of the authority to conduct accelerated readmission procedure. On the other hand, we herewith remind that, according to official data of MoI,⁴⁰ during the first six months of 2014, Macedonian authorities did not grant any readmission requests of regional centers for taking over individuals under the accelerated procedure⁴¹.

3.c. Recommendations

1. Amend the current Law on Asylum in order to ensure a higher level of protection and establish a fair and efficient asylum procedure (to specify the deadlines in which the actions are carried out, guarantees when applying the concept of third safe country, introduce an airport procedure, etc.)
2. Establish a procedure for the forcible removal of aliens without legal grounds to stay in the territory of the Republic of Serbia, which will allow the alien to exercise his right to make a declaration on his removal; ensure he/she is provided with an interpreter for a language he/she understands as well as a competent legal representative, and that he has at his/her disposal a legal remedy with suspensive effect.
3. Amend the current government decision on establishing a list of safe countries of origin and safe third countries, by introducing clear and transparent criteria’s on what countries can be seen as safe, as well as mechanisms for periodic evaluation, with provision of guarantees for the protection of asylum seekers when the concept of safe third country is applied (ensuring that relevant “third country” authorities will take jurisdiction in reviewing application for asylum)
4. Enhance the professional expertise of the decision makers among all actors that are taking part in the asylum procedure.
5. Improve the treatment of foreigners, potential asylum seekers, through the implementation of continuous trainings for the representatives of Ministry of Interior and other actors who come into contact with foreigners, and through creating a special form (in English, French, Arabic, Pharsi and Urdu) which would be given to aliens and which would list the rights of aliens deprived of liberty, but also information that the alien, if he has left the country of origin for reasons of persecution or generalised violence, has the right to seek asylum in Serbia.

⁴⁰ ‘Challenges of the asylum system’ Group 484, Belgrade Center for Human Rights, Belgrade Center for Security Policy, Belgrade 2014, pg. 66-67

⁴¹ “Challenges of the asylum system” Group 484, Belgrade Center for Human Rights, Belgrade Center for Security Policy, Belgrade 2014, pg. 51.

4. TORTURE AND ILL-TREATMENT IN DETENTION

Article 11 and LOIPR questions 20 and 21

4.a. Issue Summary

4.a.1. Overcrowding and its consequences

Serbian penitentiary facilities still suffer from overcrowding. According to the latest data from the Administration for the Implementation of Criminal Sanctions, the prison population of Serbian penitentiary facilities is around 10,600.⁴² The full capacity of the facilities is difficult to determine, but in the experience of Serbian NGOs working in the field, overcrowding is the most pronounced in the three biggest prisons – Sremska Mitrovica, Požarevac and Niš. The combination of poor living conditions, overcrowding and a lack of prison staff can lead to violations of the prohibition of ill-treatment, more precisely, to inhumane and degrading treatment.

The worst living conditions have been detected in the County Prison in Belgrade, the Special Prison Hospital and the Correctional Institutions in Sremska Mitrovica and Požarevac. In these institutions, long-term accommodation can amount to inhumane and degrading treatment.⁴³ In the County Prison in Belgrade and the Special Prison Hospital, the vast majority of rooms do not have windows; the Sremska Mitrovica IV Pavilion is ruined and overpopulated, and so is the VII Pavilion in Požarevac, where prisoners are locked up for 22 hours a day in small rooms without any meaningful activities organized by the prison administration.

Overcrowding leads to violations of numerous rights such as the right to spend 2 hours outside in the open, at least 6 hours outside the cell with the possibility of being involved in meaningful activities etc. Facing an insufficient number of prison staff in all relevant services (treatment, health and the security service), convicts often complaining of a lack of communication with treatment officers and the health service.⁴⁴

4.a.2. Practice of judicial authorities and statistical data

The reasons for overpopulation and other problems can be found in the strict penal policy established by the Serbian judiciary that is more likely to impose measures involving incarceration as opposed to alternatives such as alternative sanctions and alternatives to pre-trial detention.⁴⁵ Statistical data shows that around 90 % of sentences of imprisonment are for up to 3 years, around 80% for up to 2 years and around 65% are for up to one year. The Serbian Criminal Code provides for alternative sanctions such as “house arrest” and community service that could have been used in the vast majority of said cases.

42 For more information look in the report “Smanjenje prenaseljenosti kazneno-popravnih ustanova u Srbiji”, page 27, available at <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Smanjenje-prenaseljenosti-kazneno-popravnih-ustanova-srp.pdf>.

43 For more information look in the report „Human rights in Serbia 2013“, Belgrade Centre for Human Rights, page 118, available at <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/04/Ljudska-prava-u-Srbiji-2013.pdf>.

44 All of the findings were collected through the monitoring activities of the authors of this report.

45 Complete statistical data and practice of judicial authorities for the 2010 -2014 period may be found in the report “Smanjenje prenaseljenosti kazneno-popravnih ustanova u Srbiji”, pages 10, 15, 16 and 31-40, available at <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Smanjenje-prenaseljenosti-kazneno-popravnih-ustanova-srp.pdf>.

Table of imposed prison sentences 2010 - 2014.

Sentence	2010	2011	2012	2013
40 years	10	3	2	1
30-40 years	16	5	12	9
Over 15-20 years	18	29	30	14
10-15 years	54	51	46	48
5-10 years	156	195	232	260
2-3 years	1.155	1.483	1.907	1.947
1-2 years	1.344	2.002	2.701	3.003
6 months - 1 year	1.202	1.779	2.225	2.728
3 - 6 months	1.026	1.268	1.485	1.536
1-3 months	556	744	850	993
Total	5537	7559	9.490	10.539

Table of imposed sentences of community service in the 2007 – 2014 period

Year	2007	2008	2009	2010	2011	2012	2013	2014	Total
Imposed sentences	48	35	51	71	357	365	348	-	1.275
Executed verdicts	-	-	17	17	90	209	253	351	937

The conditions of imposing a sentence of community service are prescribed by Article 52, paragraph 1 of the Criminal Code:

“Community service may be imposed for criminal offences punishable by imprisonment of up to three years or a fine.”

Table of imposed sentences of house arrest between 2011 and 2014

Year	2011	2012	2013	2014-2.Dec	Total
Number of sentences	88	610	725	627	2.050

The conditions of imposing a sentence of home confinement are prescribed by Article 45, paragraph 5 of the Criminal Code:

“When pronouncing to a perpetrator of a criminal offence a sentence of up to one year of imprisonment, the court may concurrently order its enforcement in the premises wherein he/she lives if in respect to the personality of the perpetrator, his/her previous lifestyle, his/her conduct after commission of the offence, degree of guilt and other circumstances under which the offence was perpetrated it may be expected that in this manner the purpose of punishment will also be achieved.”

Similar problems exist when it comes to the use of pre-trial detention where courts are not likely to impose alternatives. What follows is a statistical overview of the use of the pre-trial detention measures and other measures for ensuring the presence of the defendant and the unobstructed conduct of criminal proceedings, which the Belgrade Centre for Human Rights has collected by requesting access to information of public importance, to which requests 92% of the courts responded (80% of the courts submitted all of the requested information, however this still allows for an adequate assessment of the current state of affairs).

Number of detainees per years on 31 December

2010	2011	2012	2013	2014
3.332	3.109	2.532	1.894	c. 1.800

A comparison between the number of persons in pre-trial detention and the number of those subjected to other measures of ensuring the presence of defendants and the unobstructed conduct of criminal proceedings from 2010 to 1 November 2014 (note: bearing in mind that certain courts have provided information on the number of cases where pre-trial detention has been imposed, and one pre-trial detention case may involve several persons, the number of persons in pre-trial detention is several dozen higher).

Measures	2010	2011	2012	from 1 October 2013 to 1 November 2014
Pre-trial detention	4.037	3.246	3.317	4.926
Prohibition of leaving the dwelling and place of temporary residence	91	113	145	this measure does not exist as of 1 October 2013
Bail bond	56	38	52	44
Prohibition of leaving the dwelling	this measure did not exist before 1 October 2013			319 (200 of which 200 with electronic surveillance)
Ban on leaving the place of temporary residence	this measure did not exist before 1 October 2013			214
Ban on approaching, meeting and communicating	this measure did not exist before 1 October 2013			104

Several conclusions can be drawn from these tables:⁴⁶

During 2011 and 2012, the use of the measure of pre-trial detention decreased, but the use of measures alternative to pre-trial detention was negligible; at the annual level, compared to several thousand instances of pre-trial detention, an average of between 150 and 200 alternative measures was imposed. In the opinion of the authors of this report, the less frequent ordering of pre-trial detention in this time-frame cannot be linked to a change in judicial practice concerning pre-trial detention, but rather a decline in the total number of criminal proceedings conducted during this time.⁴⁷

Since the new criminal procedure code came into effect (1 October 2013) the use of measures alternative to pre-trial detention has increased, but pre-trial detention has also been imposed far more frequently. The prohibition of leaving the dwelling with and without electronic surveillance was imposed far more frequently, while bail bond remained a measure laid down in a negligible number of cases (less frequently than in previous years). In the Republic of Serbia, there remain courts which, over the past few years, have not imposed a single measure of ensuring the presence of the defendant and the unobstructed conduct of criminal proceedings other than pre-trial detention, while the vast majority of courts have imposed measures alternative to pre-trial detention in only a negligible amount

⁴⁶ For more information on the practice of specific courts look in the report “Smanjenje prenaseljenosti kazneno-popravnih ustanova u Srbiji”, pages 31-40, available at <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Smanjenje-prenaseljenosti-kazneno-popravnih-ustanova-srp.pdf>.

⁴⁷ More in: Review of the Results of Measures Conducted in Accordance with the Strategy for Reducing Overcrowding in Penal Institutions in the Republic of Serbia, adopted for the 2010-2015 period, available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Pregled-mera-sprovedenih-u-skladu-sa-Strategijom-za-smanjenje-prenaseljenosti.pdf>.

of cases (less than ten on an annual basis).

It is also important to emphasize the high number of unjustified pre-trial detentions, which embodies the practice of systematic violation of right to liberty and may lead to ill-treatment. Namely, treatment of detainees and living conditions in detention units in Serbia can very often amount to inhumane and degrading treatment. Frequent imposition of unjustified pre-trial detention is creating a practice where innocent people are systematically suffering violation of their right to liberty and security which has negative impact on their mental and physical state, but also brings severe socio-economic consequences.

For example in the civil procedure for the awarding of damages number P - 1288/11(Higher Court in Belgrade), the claimant has spent 1.273 days in pre-trial detention and has suffered numerous mental and physical consequences because of the conditions and treatment in county prison in Belgrade; P - 793/12 (I Basic court in Belgrade)the claimant has spent only 16 days in pre-trial detention but it caused loss of job and huge consequences on his family life; P 3477/12 (I Basic court in Belgrade) the claimant has suffered serious consequences on his health and had spent 266 days in County prison in Belgrade in poor living conditions ; P 4597/13 (Basic prison in Kragujevac) the claimant spent 374 days in pre-trial detention in poor living conditions in overcrowded cell with beds in three floors lacking natural light and air and locked up for 23 hours in room, etc;

According to the Belgrade Center for Human Rights, around 20 000 days of unjustified detention has been imposed every year since 2005. In order to exercise their right to compensation of damages, a person in groundless detention is obliged to address the Ministry of Justice Committee, who the Criminal Procedure Code has entrusted with the task of reaching settlement agreements with the groundlessly detained persons. Should the Committee and the injured party (i.e. the groundlessly detained person) fail to reach an agreement on the amount of compensation for damages, the groundlessly detained person has the right to file a lawsuit, demanding just reparations.

Table showing the work of the Ministry of Justice Committee from 2005 to 1 October 2013⁴⁸

Year	Requests submitted for compensation of damages due to groundless deprivation of	Requests reviewed by the	Number of pre-trial detention days in cases reviewed by the Committee	Number of	Number of days spent deprived of liberty following the conclusion of	Paid out as per
2005	876	496	/	315	17.461	
2006	904	405	24.872	170	12.687	
2007	698	455	26.913	206	15,930	
2008	452	275	27.535	133	6,924	
2009	528	237	13.499	63	2,722	
2010	572	217	12.071	53	3.051	7.517.500
2011	574	346	22.076	50	4.149	
2012	607	342	21.582	51	2.355	
until 1 October 2013	658	408	31.591	45	5.419	
				40	6.154	
Total	5.896	3.181	180.089	1.126	76.852	

48 The data for 2014 will be entered into the Report subsequently. So far it has been established that, in the previous nine years, the Committee paid out approximately 250.000,00 Euros annually.

The figures above tell the following:

- The total amount paid by the Committee in the stated period of time for groundless pre-trial detention is 262.100.380,00 Dinars, which roughly corresponds to an annual average of 238.700,00 Euros.
- The average amount, which the Committee paid per day of groundless deprivation of liberty is 3.410,00 Dinars.
- Out of the 5.896 requests submitted, the Committee reviewed 3.181, whereas 2.715 requests were never reviewed at all.
- The 3.181 requests, which the Committee reviewed concern 180.089 days of groundless deprivation of liberty. If we take into account the 2.715 requests that have not been reviewed, it can be concluded that the number of days spent in groundless deprivation of liberty is significantly higher.⁴⁹
- Out of the 3.181 requests reviewed by the Committee, a settlement was concluded in 1.126 cases, concerning 76.852 days.
- The 2.055 requests that were rejected concern 103.237 days.
- At least 103.237 days of groundless deprivation of liberty are the object of litigation involving requests for compensation of damages.
- The average amount awarded by courts in lawsuits before 1 October 2013 is difficult to establish; the information available to the public indicates that the courts have awarded an average of 8.000,00 to 12.000,00 Dinars per day of groundless pre-trial detention.⁵⁰ After 1 October 2013, these amounts were cut down to an average of 5.000,00 Dinars per day of groundless pre-trial detention (see the following Table).

Table showing the practices of state prosecutors' offices in proceedings for the compensation of damages for groundless pre-trial detention from 1 October 2013 to 1 November 2014

City	Total number of cases	Number of days of groundless pre-trial detention	Awarded amounts
Belgrade	104	19.739	114.917.500,00
Leskovac	19	896	3.545.600,00
Zajecar	17	2.561	12.242.000,00
Zrenjanin	8	191 (one judgement did not establish the number of days)	1.445.000,00
Kraljevo	13	596	2.523.000,00
Kragujevac	13	1.259	7.563.000,00
Valjevo	10	211	1.124.000,00
Niš	2	127	1.160.000,00
Novi Sad (did not provide information)			
Požarevac	4	106	1.690.000,00
Subotica	8	1.016	2.558.000,00
Užice	3	44	440.000,00
Total	204	30.149	149.208.100,00

⁴⁹ However, it should be borne in mind that a certain number of requests was rejected, or were not taken into consideration, as unfounded or expired.

⁵⁰ http://www.danas.rs/danasrs/drustvo/zbog_nezakonitih_hapsenja_drzava_placa_godisnje_i_do_dva_miliona_evra_.55.html?news_

Several conclusions can be drawn from the above Table:

- 204 persons spent 30.149 days in groundless pre-trial detention, for which the competent court paid approximately 5.000 Dinars per day.
- The total amount of money paid out to groundlessly detained persons from 1 October 2013 to 1 November 2014 is 149.208.100,00 Dinars, that is, approximately 1.223.000,00 Euros.
- Adding to the amount of approximately 1.223.000,00 Euros the average amount paid out by the Ministry of Justice Committee annually in the course of the previous nine years (c. 238.700,00 Euros), as well as the information on the amount awarded in lawsuits in which the interests of the Republic of Serbia were represented by the Novi Sad State Prosecutor's Office (which this Prosecutor's Office did not submit to the Belgrade Centre for Human Rights), it is clear that this amount exceeds 1.500.000,00 Euros.
- In the given period of time, the longest groundless pre-trial detention lasted 1.273 days, while other long pre-trial detention cases include those in which the defendants spent as many as 910, 794, 758, 709 and 636 days in detention.
- In addition to the infrequent use of measures alternative to pre-trial detention, pre-trial detention measures were imposed without grounds in a large number of cases. As a result, the right to liberty and security of person is frequently violated (Arts. 27-31 of the Republic of Serbia Constitution and Art. 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms), with grave consequences for persons groundlessly deprived of liberty and millions spent for the compensation of damages, which are taken from the budget of the Republic of Serbia. Naturally, it is not difficult to conclude that this practice also contributes to the overcrowding of penal-correctional institutions in the Republic of Serbia.

4.a.3. Commissioner service as a way of overcoming prison overcrowding

Enforcement of Extra-Institutional Sanctions and Measures Act (EESMA) came into effect on 1 September 2014. This act regulates in the detail the competences of the Commissioner Service within the Department for Treatment and Alternative Sanctions of the Penal Sanctions Enforcement Directorate. Pursuant to Art. 5 of the EESMA, the Commissioner Service conducts the following activities: it monitors the enforcement of the prohibition of leaving the dwelling (hereafter: house arrest) and the ban on approaching, meeting and communicating with certain persons; it organizes, implements and monitors the enforcement of the prison sentence on the premises where the convicted person lives (house arrest); it organises, implements and monitors the enforcement of the community service sentence and protective supervision in cases of suspended sentences, etc.

It is obvious from the listed competences that the scope of jurisdiction of the Commissioner Service is exceptionally wide. In order for the above-mentioned act to be implemented in practice, it is necessary to substantially strengthen the capacity of the Commissioner Service, which currently has 25 officers and 42 commissioners. Among these, 23 commissioners are simultaneously treatment officers in penal-correctional institutions, which certainly makes the performance of their (extra-)institutional duties more difficult. In addition, the work of post-penal admission, which has been reintroduced into the penal sanctions enforcement system, requires the mobilization of a much larger number of people, as the number of repeat offenders in penal-correctional institutions accounts for approximately 70% of the entire prison population. Post-penal support is one of the most important measures aimed at contributing to a decline in the rate of recidivism, which would indirectly lead to a decline in the prison population.

The capacity of the Commissioner Service at present is not such as to be sufficient to follow an increase in the imposition of alternative sanctions. A comparison of the pronounced and enforced community service sentences clearly shows that the Commissioner Service has not managed to enforce all of the imposed sentences. Although gradually broadening, the network of commissioner offices is still understaffed. It is our belief that in the jurisdiction of a large number of courts, this form

of punishment has not been considered a possibility because the courts did not favour the imposition of community service sentences or house arrest sentences, when their enforcement would have been practically impossible due to the non-existence of commissioner offices.

4.b. Reports of other bodies

The Ombudsperson of the Republic of Serbia has expressed the same concerns in its annual report for 2014, claiming that prisoners are being deprived of numerous rights guaranteed by international and internal legislation such as: suitable living conditions, meaningful activities, healthcare, and correctional treatment.

Numerous deficiencies in the Serbian penitentiary system were also detected in the CPT report for 2011, including poor living conditions in the county prison in Belgrade and in the Požarevac penitentiary; prison overcrowding; poor healthcare, and lack of meaningful activities for convicts and pre-trial detainees.

4.c. Recommendations

1. Create better conditions for the wider use of alternative sanctions and alternatives to pre-trial detention in order to reduce prison overcrowding and improve the quality of the system for the implementation of criminal sanctions. The best way would be to strengthen probation services in all of the municipalities in Serbia, but also to conduct trainings for judicial officers (judges and prosecutors) in order to change their retributive attitude (judicial authorities should orient more towards the alternatives to incarceration in order to reduce prison overcrowding)
2. The Administration for the Implementation of Criminal Sanctions should hire more staff for all three relevant services (health, treatment and security service) in prisons, but also within the Commissioners Service as part of the Department for Treatment and Alternative Sanctions.

5. INVESTIGATION AND PROSECUTION

Articles 12 and 13 and LOIPR questions 27, 29 and 30

5.a. Issue Summary

5.a.1. Legal framework

On 1 October 2013, the new Criminal Procedure Code came into force (“Official Gazette of the Republic of Serbia”, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), bringing several changes, which from the angle of investigating and prosecuting perpetrators of torture and other forms of ill-treatment, has several disputable novelties:

Art. 495 stipulates that summary proceedings shall be envisaged for criminal offences for which a fine or a term of imprisonment of up to eight years is prescribed as the principal penalty. Summary proceedings imply that the public prosecutor is not under obligation to conduct an investigation, but undertake certain investigative actions of his own accord (Art. 499, para. 2 of the criminal procedure code) or on orders from the judge (Art. 501, para. 5). In other words, for all forms of ill-treatment, except for the gravest form of extortion of statement, the public prosecutor shall not be under obligation to conduct an investigation (the maximum penalty for the criminal offence of ill-treatment and torture is 8 years, whereas for extortion of statement it is 10);

The new criminal procedure code makes it impossible for the injured party (potential victim of torture) to criminally prosecute before the indictment is confirmed in cases where the public prosecutor rejects the criminal report, suspends the investigation or abandons an already raised but as yet unconfirmed indictment. The sole legal remedy at the disposal of the injured party in this case is a complaint filed directly with the senior public prosecutor. If the Senior Higher Prosecutor rejects the complaint, the victim will not have any other legal remedy at their disposal. The fact that The Public Prosecutors’ Offices tend to reject criminal complaints when the alleged perpetrator is a state official gives grounds for fear of impunity of perpetrators of ill-treatment

5.a.2. Practice of the judicial bodies

From 2009 to the day of this report’s submission, the Republic of Serbia has been found responsible for the violation of the procedural aspect of Article 3 of the European Convention:

- Stanimirovic v. Serbia (application number 26088/06);
- Hajnal v. Serbia (application number 36937/06);
- Lakatoš v. Serbia (application number 3363/08);
- Habimi et al. v. Serbia (application number 19072/08);
- Petkovic v. Serbia (application number 31169/08): In this case, the perpetrators of ill-treatment against the son of the applicant have not yet been discovered, although the European Court ordered that an efficient and effective investigation must be conducted, so as to discover and punish the perpetrators of ill-treatment, which undoubtedly occurred and which resulted in the death of a convict in the VII Pavilion at the Požarevac penitentiary.

The Constitutional Court, at the 24th session of the First Grand Chamber held on 10 July 2013, deciding in the case UŽ-4100/2011, for the first time rendered a decision confirming that the right to the inviolability of physical and mental integrity, as guaranteed by Article 25 of the Constitution of the Republic of Serbia, has been violated for a person submitting a constitutional appeal. The Court granted the constitutional appeal and established that during detention and serving his prison sentence, the appellant’s right to the inviolability of physical and mental integrity was violated, more precisely, the material and procedural aspects of this right. In this decision, the Constitutional Court took the position that members of the security service, both during detention and in the course of

servicing the prison sentence, treated the petitioner inhumanely, determining that the use of means of force was in three instances justified but disproportionate, while in one instance the use of means of force was judged illegal and unjustified. The Court pronounced it had no jurisdiction based on *ratione temporis* for the events that occurred during police custody in July 2005, given that the Constitution of the Republic of Serbia came into force on 8 November 2006. Incidents from this case are also related to the VII Pavilion of the Požarevac penitentiary.

In the time period from 1 October 2012 to 1 November 2014, there were conducted or are still ongoing 79 proceedings against 138 persons acting in their official capacity for the criminal offence of ill-treatment and torture (MIA members in the vast majority of cases). Of the 79 proceedings, 23 have become final, and the responsibility of a police official was established in only two cases. One judgment resulted in a suspended sentence and the other in an 8-month prison sentence. In all the other cases, the responsibility of a person acting in an official capacity was not determined because the prosecutor (public or subsidiary) abandoned the prosecution or the court ruled that there was no responsibility of the persons acting in their official capacity. In more than half of these cases victim overtook criminal prosecution after The Public Prosecutor rejected criminal complaints (it happened before 1. October 2013 when that possibility existed). It is important to emphasise that in all of the ECHR cases, as well as in constitutional appeal 4100/2011 Public Prosecutor's office rejected criminal complaints claiming that there are no facts indicating the existence of ill-treatment. Eventually, it turned out that these rejections meant violation of procedural aspect of Art. 3.

The described practice gives rise to doubt in the competent judicial bodies' readiness to investigate and examine all serious charges of ill-treatment when the potential perpetrator is a person acting in their official capacity (most frequently a MIA member).

The State Prosecutors office are not collecting data on criminal reports filed against persons acting in their official capacity for the criminal offence of ill-treatment and torture, and extortion of statements, when the alleged perpetrators of these offences are official persons. There is also no data collection on the outcomes of the filed criminal reports. This makes it very difficult for anyone to verify the scale and scope of the problem.

The previously given information refers to proceedings which have entered the phase of main hearings, i.e. in which the charging document was confirmed. It is important to note that the main hearing in criminal proceedings K 1347/13 is in progress, in which several commanders of the VII Pavilion of the Požarevac penitentiary are the accused.

5.a.3 investigation and prosecution of cases in Leskovac

In Leskovac, problems persist in relation to conditions of detention and incidents of torture in police detention and the district prison particularly in the form of beatings. In 2014, the Committee for Human Rights in Leskovac received complaints of torture from 16 individuals. Nine of the decided to initiate formal complaints and out of these, five cases are still pending before local courts and four have withdrawn their complaints due to external pressure including threats of violence.

There are a number of systemic problems that allow this situation to persist. There is no system of medical screenings through the detention process making it very difficult to determine in whose custody abuse has taken place. While surveillance cameras have been put up in certain areas (especially the hallways) of the police detention and district prison but there is no video monitoring of interrogation rooms.

When complaints are brought, victims face a number of additional obstacles to justice and reparation. For persons in detention, medical evidence of their torture is difficult to obtain since health professionals working in the prisons lack technical ability and willingness to document allegations of torture and in some cases refuse access to medical records, which could be useful for establishing violations. Finally, the investigations of complaints against police or prison officials lack independence as they are carried out by police officials also employed by the Ministry of Interior. The Ministry of

Justice and the Institution for custodial sanctions have been informed about these problems in 2013 and 2014 but so far no action has been taken.

5.b. Reports by other bodies

Report CPT CPT/Inf (2012) 17 on the visit to the Republic of Serbia conducted in 2011 also points to the case *Petkovic v. Serbia*, but also a series of allegations of ill-treatment in the VII Pavilion at the Požarevac KPZ.

5.c. Recommendations

1. It is necessary to establish a record of criminal complaints filed against persons acting in their official capacity for criminal offences of ill-treatment and torture and extortion of statements. It is also necessary to establish a record which would make the outcome of the listed criminal reports clear.
2. It is necessary to make certain legislative amendments so that efficient and effective obligatory investigation be conducted for the criminal offences of ill-treatment and torture and extortion of statements, especially in situations where the potential perpetrator of torture is a person acting in their official capacity.
3. It is necessary to conduct efficient and effective investigations in all the listed cases before the European Court and the Constitutional Court of the Republic of Serbia, in order to investigate complaints referring of ill-treatment, i.e. to discover and penalise the perpetrators of ill-treatment, which occurred beyond any doubt.
4. It is necessary for all public prosecutors to undergo specialised training, in order to become acquainted with the standards of examination of serious charges of ill-treatment (arguable claim), especially in cases where the person filing the complaint has been deprived of liberty.
5. The Government of Serbia should establish a medical screening system for all persons in custody at entry, exit and transfer between institutions. This should be combined with training of health professionals in documentation of torture in accordance with the Istanbul Protocol.

6. REPARATION AND REHABILITATION

Article 14 and LOIPR questions 1, 31, 32 and 33

6.a. Issue summary

6.a.1. Rehabilitation and reparation

During the war in former Yugoslavia, 1991 – 1995, Serbia was faced with a huge number of refugees that fled Croatia and Bosnia and Hercegovina (BiH), as well as with great numbers of Internally Displaced Persons (IDPs) from Kosovo and Metohija. The exact number of refugees and IDPs is unknown, but it is estimated that there were about 500,000. Many of them were tortured or ill-treated in Croatia and BiH during the war. The exact number of torture victim in Serbia is unknown but unofficial records show that the number of torture victims in Serbia, that were tortured during the war in Croatia and BiH is more than 10.000, while no one knows the exact number of people who have experienced torture in state institutions such as prisons, correctional homes and institutions for the care of people with mental disorder during the Milosevic regime.

The experience of torture is one of the most traumatic experiences, even if we take into account other traumatic events caused by the war. Torture is an extreme, interpersonal trauma, which, as such, threatens the psychological and physical health of the individual. The consequences of torture are multiple and can be long lasting especially if they are not treated in time. Many of IAN's clients, who suffered torture during the war, experience serious psychological symptoms including intrusive, painful thoughts and memories of traumatic event, nightmares and insomnia. They avoid activities, places and people that remind them of the trauma, withdraw from people, and feel detached from family members. They have problems with overreacting, outburst of anger and problems with concentration. The majority of IAN's clients often feel depressed and anxious. They also experience a multitude of social effects including inability to get and to hold a job and engage with their families and communities. They have the feeling that their future is shortened, that they will not have their usual normal life again. Most of the people supported by IAN are persons with broken health (both psychological and physical), family, social and professional life.

International Aid Network (IAN) has been providing holistic rehabilitation to torture victims and members of their families in Serbia for 15 years. During this period, IAN has assisted more than 2500 torture victims with the financial support of international human rights donors such as the European Union, UN Voluntary Fund for Torture Victims and the OAK Foundation.

Ian client profile

Most of IAN's clients are refugees, come from rural areas, are generally less educated, and are elderly. The majority of victims of torture in IAN are men (75%), reflecting the fact that men were more often incarcerated and tortured during the wars.

Over 60% of IAN clients have been diagnosed with PTSD. Together with posttraumatic stress disorder, the most frequently established diagnosis was one of the depressive disorders (40%), anxiety disorders (26,3%) and rarely the diagnosis of alcohol abuse, somatophorm and other disorders.

IAN clients represent population with high risk of developing somatic disorders. In more than 60% of clients cardiovascular diseases were established as the primary diagnosis, of which 82% of patients were diagnosed with arterial hypertension and 5.2% with coronary diseases. The second most frequent group of disorders were those of endocrine glands (11.8%), of which 67.4% of

The conflict also created a large number of secondary torture victims among those who supported torture victims through their healing process (Remer, 2000). These persons tend to suffer from trauma transferred from the primary victim. Given that these social support networks are much larger than the number of victims (Remer & Elliott, 1988a,1988b) the consequences of torture greatly surpass the number of primary victims.

Article 14 of UNCAT provides victims of torture and ill-treatment a right to rehabilitation, which encompasses the States obligation to ensure that specialised rehabilitation services are available, appropriate and promptly accessible to all victims without discrimination. Torture survivors are at greater risk of somatic and especially psychiatric disorders. Their health problems last longer and carry a higher risk of becoming chronic. Although the war ended 20 years ago, most of IAN's clients still suffer the physical and psychological consequences and haven't integrated adequately into society. Most of them have financial problems, are unemployed and have inadequate housing. Furthermore, the less frequent but continuing instances of torture and ill-treatment continues to produce new victims with rehabilitation needs.

Although torture victims in Serbia have a right to access health care as any other Serbian citizen, they are not recognised as a special group that needs specialised services. If a person who has survived torture asks for medical examination by a specialist in public health institution, it may happen that the person has to wait for a few months. In the mental health centres torture victim can receive psychiatric examination and medicines, but free-of-charge psychotherapy is generally not available due to the large number of patients and the insufficient number of therapists. This means that existing public services are only sporadically available, are more focused on diagnostics than treatment and lack the holistic nature, which is often needed to ensure appropriate rehabilitation. Finally, neither free-of-charge legal assistance nor forensic examinations are available to torture victims. Medical doctors do not have enough knowledge to identify torture victims and to write appropriate medical-legal report. This makes prompt identification of victims difficult.

Governmental bodies such as Ministry of Health, Ministry of Justice, Ministry of Labour, Employment, Veteran and Social Policy, and the Office for Human and Minority Rights do not have sufficient capacity and knowledge related to delivery of reparation and rehabilitation for torture victims. This includes identification of torture victims according to the Istanbul Protocol; interdisciplinary and holistic approaches to rehabilitation of victims of torture; confidentiality; and secondary traumatisation. So while victims expect the Government to implement their right to such services, the Government is unable to deliver on this obligation.

In a Serbia there is no specialized centre with comprehensive, holistic rehabilitation services for victims of torture, established or financed by the Government. The only centre for the rehabilitation of torture victims is IAN Centre, which provides holistic rehabilitation that includes medical, psychological, legal and social services, and it is entirely financed by international donors. While IAN does provide appropriate services, it is unfortunately not able to cover the existing needs of victims with its current capacity. Therefore, many victims from the past and present are left with severe unaddressed physical and mental trauma, which is not likely to go away by itself.

6.a.2. Compensation to forcibly mobilised refugees

During the war time (1991 – 1995), the Serbian government forcibly mobilised tens of thousands refugees and citizens of Serbia and sent them to the battlefields in Croatia and BiH. The people were literally “hunted down” like they were criminals. They were taken from trams, buses, cafes, in the street, at student dormitories, and sent to combat.

The most intensive forcible mobilization took place in the summer of 1995. After the Croatian military action “Storm”, hundreds of thousands of ethnic Serbs that were exiled from Croatia tried to find refuge in Serbia. Instead of shelter and refuge they were faced with massive forcible mobilisation. Many of them were first sent to paramilitary “training camps” of the Serbian Voluntary Guard in Erdut (town in Croatia that was under jurisdiction of Serbian authorities at that time) or in Manjaca (town in

Republic of Srpska also under Serbian authorities at that time), held by Serbian paramilitary forces where they were brutally tortured. Subsequently, they were sent to the battlefield in BiH, where the war was still raging. It is estimated that during that summer around 10,000 refugees were forcibly mobilised.

“Some of these people had spent four years in war only to be forcibly brought back to it. Especially touching was the case of those August refugees who had roamed for days in Serbia looking for any kind of accommodation and whose first contact with the authorities was used to bring them back forcibly. They, simply, did not know that by avoiding the Croatian “Storm” they entered the Serbian one” (Radovic, 2006).

In the “training camp” they were exposed to torture and humiliation. The methods of “punishment” they were subjected to, for “offences” they did not commit, were deeply insulting to human dignity. They were forced to run in circles, carrying a rock of 20kg of weight, named “Mr. Discipline”, that they had to bow to before they took it up, and do the same after putting it down. They were locked up and tied to doghouses, and forced to bark like dogs. They were stripped to the waist and remained tied to flag poles for several days. This type of violence was used as an instrument of coercion against the exiled and expelled persons, with the aim to intimidate them and break their personalities. After several days in the Camp, the refugees were sent against their will to the combat. They were deployed to the frontline where they were constantly exposed to all risks of war, and many of them lost their lives. Most of them remained within these units until the signing of the Dayton Agreement in December 1995. Some of them were captured in the course of war actions and held captive and tortured in Sarajevo, Mostar, Bihac, until the official exchange of war prisoners, in some cases even until June 1996.

Case story

After the military action „Storm“in Croatia, N.P. fled to Serbia. He managed to find his family and they reunited again and settled in Trstenik, town in south part of Serbia. At the same day when he registered as a refugee in the Commissariat for refugees, late in the evening police officers took him in the police station for an informative interview. There were 10 more refugees in the police station. After 4 hours he was taken, together with others to the bus full of refugees and driven in an unknown direction. Nobody knew where or why they were taken. Early in the morning the bus arrived in the Serbian paramilitary camp in Erdut (town in Croatia which was under jurisdiction of Serbian authorities). When they got off the bus they had to undergo the military punishment of receiving blows and insults while running between two rows of men. Members of Serbian paramilitary forces (SPR) took their documents, valuables and shave their hair. He spent a month in the camp. He was brutally tortured during that time. He was beaten, kicked, tied to the spar, humiliated, forced to bark as a dog and tied to the dog house. Several times he had to carry a stone of “discipline”. After a month he was sent to the battlefield in Bosnia and Herzegovina. He was forced to participate in combat. After the signing of the Dayton Agreement, he was returned to Erdut camp, and transferred from there to a place near Osijek in Croatia (that was still under the jurisdiction of Serbian authorities). He was demobilized in 1996.

All the time he was very frightened for his life. The worst thing for him was the fact that he was captured and tortured by his own “people”. As the consequences of torture experience he suffered chronic Post Traumatic Stress Disorder. N.P. claimed for compensation of non-material damages because of unlawful deprivation of liberty. Although he suffered from PTSD he did not obtain compensation.

According to Article 14 of the UNCAT “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. CAT General Comment No 3 interprets this right to include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. It also stipulates that statutes of limitation should not be applicable as they deprive

victims of redress. This position has been reaffirmed by the European Court of Human Rights, which *“acknowledges that the psychological effects of ill-treatment inflicted by State agents may also undermine victims’ capacity to complain about treatment inflicted on them, and may thus constitute a significant impediment to the right to redress of victims of torture and other ill-treatment”*⁵¹.

The Code of Obligations of Republic of Serbia envisages the possibility of initiating proceedings for unlawful deprivation of liberty in the case of forcible mobilisation i.e. filing claims for compensation of non-material damages to all persons who have suffered emotional pain, fear or physical pain.

The general statute of limitation for compensation claims is an objective period of 5 years from the event or a subjective period of 3 years from the day of the plaintiff’s knowledge of the damage and the perpetrator. Only about 1,000 forcibly mobilized refugees (of estimated 10,000) have filed claims for compensation of non-material damages because of unlawful deprivation of liberty, within the legally prescribed period of five years.

The reason for this small number of claims was that many feared further persecutions by the Slobodan Milosevic’s regime. The individuals who had been directly involved in conception, planning and execution of the forcible conscription of refugees were still holding top positions within the police and Serbian political system, at that time. Furthermore, the persons in question are refugees who were forced to struggle for their existence due to poor economic situation in Serbia and most of them had no material resources and information that the claims for compensation of non-material damages should be initiated within the legally prescribed statute of limitation for this type of damages.

Despite the lapse of the statutes of limitation, International Aid Network IAN has submitted claims for compensations. Argumentation for the case was based on the argument that in the cases of persons suffering from PTSD, the moment of diagnostic by medical doctor – psychiatrist is seen as the moment of plaintiff’s knowledge of the damage and that statutes of limitation starts from that moment.

International Aid Network (IAN) has submitted 83 claims for compensation based on psychological consequences of survived torture based on Post-Traumatic Stress Disorder (PTSD) that was diagnosed years after the torture event.

The results of these complaints are shown in the table below:

Got compensation	Did not get compensation	Gave up/ withdrawn		
With PTSD	Without PTSD	With PTSD	Without PTSD	
18	0	30	3	32

The experience from cases taken forward by IAN indicate that only persons with diagnosed PTSD have a chance of obtaining compensation and even within this group, a large majority of claims were rejected. No one got compensation “just” for the torture they survived, regardless of the consequences. There is no systematic approach of the Government related to this issue and decisions on who gets compensation has largely depended on individual judges and courts.

Most of the refugees that were forcibly mobilised didn’t get any compensation from the Serbian Government.

51 ECtHR, Mocanu and others v. Romania, Applications nos. 10865/09, 45886/07 and 32431/08, 17 September 2014, para 274.

6.b. Recommendations

1. The Government of the Republic of Serbia should full implement the right to rehabilitation for victims of torture and ill-treatment including by ensuring that specialised rehabilitation services are available, appropriate and promptly accessible without discrimination. This can either be accomplished by building the necessary capacity and expertise within the public health system or by engaging non-State service providers such as specialised non-governmental organisations.
2. The Government of the Republic of Serbia should provide trainings of medical staff in identification of torture victims according to the Istanbul Protocol and proper elaboration of medico-legal reports
3. The Government of the Republic of Serbia should conduct full investigations of all claims of torture and ill-treatment in relation to forcible mobilisation; recognise forcibly mobilized persons as victims of torture and make a public apology for the torture they have suffered;
4. The Government of the Republic of Serbia should not apply statutes of limitation in relation to cases of torture and ill-treatment regardless of whether the proceedings are criminal, civil or administrative.

7. HUMAN TRAFFICKING

Article 2 and LOIPR question 7

7.a. Issue Summary

It is not coincidence that freedom from slavery and torture are mentioned together in the Universal Declaration of Human Rights, because both are serious violation of a person's right to life, liberty and security, dignity and integrity.⁵² Further, the Committee against Torture has recognized that human trafficking and torture are closely intertwined and has repeatedly commented on the need for appropriate legislation and other measures acknowledging this fact.

The analysis of available data regarding victims of human trafficking in Serbia shows the following⁵³:

- Serbia is a country of origin and destination for human trafficking victims;
- The Number of identified trafficked persons – domestic nationals is very high. In the period 2009-2014 most of identified victims of human trafficking were citizens of Serbia, but as opposed to the previous years, when sexual exploitation was the most common type of exploitation, in 2014, the major share of identified cases in Serbia referred to trafficking for the purpose of labour exploitation. The majority of identified cases in this period were local/internal trafficking; only in 2014 cross-border/international trafficking accounted for 81.6% because of a large number of identified victims who were exploited in construction sites in Russian Federation.
- In the period 2009-2014 trafficked children accounted for 37% of total identified victims. In 2014 children accounted for 15.2%, which is significantly less compared with 2013, but this is due to the fact that major state efforts were focused on identifying male construction workers exploited internationally.
- In this five-year period, the recruitment mostly took place through job offers made by individual job brokers or persons known to the victim.

Data from Centre for the Protection of Trafficking Victims⁵⁴

		2009	2010	2011	2012	2013	2014
Total number of identified trafficking victims (with potential victims)		127	89	88	79	92	125
Citizens of the Republic of Serbia		114	85	73	65	88	120
Foreign nationals		13	4	15	14	4	5
Adult trafficking victims		69	47	62	46	47	106
Minor trafficking victims		58	42	26	33	45	19
Gender	Female	104	80	56	61	63	101
	Male	13	9	32	18	29	21
Type of exploitation	Sexual	66	34	36	42	31	15
	Labour	18	4	22	12	22	98
	Forced begging	14	12	7	12	11	2
	Forced marriage	6	9	4	6	10	4
	Coercion to crime	2	1	2	3	2	2
	Illegal adoption	1	-	3	-	-	2
	Multiple exploitation	-	-	-	4	-	6

52 "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The Universal Declaration of Human Rights.

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

54 Until 2012 the Agency for Coordination of Protection of Trafficking Victims

		2009	2010	2011	2012	2013	2014
Total number of identified trafficking victims (with potential victims)		38	37	40	29	24	16
Citizens of the Republic of Serbia		27	36	38	16	21	15
Foreign nationals		11	1	2	13	3	1
Adult trafficking victims		25	28	30	20	10	15
Minor trafficking victims		13	9	10	9	14	1
Gender	Female	28	23	27	29	17	8
	Male	10	14	13	-	7	8
Type of exploitation	Sexual	25	18	24	22	10	6
	Labour	9	14	13	-	3	8
	Forced begging	-	3	-	2	8	-
	Forced marriage	4	-	2	2	3	2
	Coercion to crime	-	-	1	1	-	-
	Not executed	-	2	-	2	-	-

Number of police reports for THB (article 388)⁵⁵ for the period 2009- 2014

	2009	2010	2011	2012	2013	2014
Criminal reports for article 388	51	47	32	36	30	17
Number of perpetrators	94	99	52	68	63	25
Number of victims	85 (48 minor)	76 (33 minor)	74	63 (28 minor)	45 (30 minor)	52 (11 minor)
Citizens of Serbia	79	73	72	58	45	24
Foreign citizens	6	3	2	5	-	1

Numerous activities were carried out in Serbia in the past five years by state institutions, nongovernmental and international organisations, bringing about positive changes in the field of combating trafficking in women. However, the protection of victims is still insufficient.

The Centre for the Protection of Trafficking Victims was established in 2012 to replace the former Agency for Coordination of Protection of Trafficking Victims as the central point in the national referral mechanism in charge of identification and granting victim status and of coordination of all victim assistance and protection activities performed by different actors. The Centre cooperates with Government institutions that are mandated to provide social welfare on the local level as part of the overall social welfare network; with institutions that provide accommodation to social protection beneficiaries; and with other institutions, agencies, and organizations concerned with aspects of human trafficking. Officially the Centre consists of two units: the Agency and the shelter for urgent accommodation of trafficked persons. The shelter has not become functional yet.

⁵⁵ http://www.astra.rs/eng/?page_id=40

CAT Position

The Committee requested that the Serbian government provide, in its next periodic report, information on:

- (a) Any new legislation and/or measures adopted to prevent and combat human trafficking, including the content of the amendments to the Criminal Code adopted in August 2009;
- (b) Steps taken to ensure that victims of human trafficking have access to effective remedies and reparation;
- (c) Measures adopted to ensure that victims of trafficking are provided with adequate recovery and social integration services and programmes, including sensitization of law enforcement officials in contact with these victims;
- (d) The implementation of the Plan of Action to Combat Trafficking in Human Beings 2009-2011 adopted in April 2009;
- (e) The activities and achievements of the Agency for the Coordination of Protection of Human Trafficking Victims;
- (f) The signature of bilateral and sub-regional agreements with countries concerned, including neighbouring countries, to prevent and combat human trafficking.

7.b. Problems and challenges

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

- There are still cases of detention, prosecution and punishment of victims due to the unsatisfactory identification by officials and insufficiencies of the system protection. Serbian law still does not recognize non-punishment and non-prosecution clause.

ASTRA has been involved in the provision of legal assistance to victim who was brutally violated and exploited for seven years by a man who had committed a murder in front of her and forced her to confess the crime. Consequently, she was sentenced, by the Pan evo Higher Court (in 2012) and by the Novi Sad Court of Appeal (in 2104) to 18 years imprisonment for first degree murder she did not commit. This case of trafficking was never prosecuted because her exploitation started in 1995, years before trafficking in human beings was criminalized in Serbian legislation. Although she was officially identified as a victim in Serbia, both courts explicitly refused to establish that fact that the accused is the victim of human trafficking because of which it was not possible to apply the non-punishment provision (Article 26) of the CoE Convention on Action against Trafficking in Human Beings which Republic of Serbia signed and ratified in 2009. In June 2014 ASTRA's legal team filed a request for the protection of legality to the Supreme Court of Cassation which was rejected. Simultaneously, the lawyers submitted the constitutional complaint to the Constitutional Court of Serbia, but the case is still pending. In September 2014, the victim started serving her sentence.

ASTRA Database ID 2849

A person trafficked for the purpose of petty crime was prosecuted before the Higher Court in Sremska Mitrovica for robbery he committed under coercion and was sentenced to one year in prison. The Court of Appeal in Novi Sad confirmed such judgment, although having themselves recognized that the convicted person was a trafficking victim, which was stated in the reasoning of the judgment. At the same time, this person appears as a witness/victim in the trial for human trafficking that is conducted before the Higher Court in Belgrade.

After the victim was convicted, ASTRA's lawyers tried to find relief through extraordinary legal remedies. However, in December 2012 the Supreme Court of Cassation rejected Republic Prosecutor's Request for the protection of legality and the judgment of the Novi Sad Court of Appeal became final and enforceable.

During the entire process in relation to extraordinary legal remedies, ASTRA focused on postponing the serving of the sentence. But when the judgment became final and enforceable, the only concession that we managed to get for the victim is home detention. After two rejections, the request for home detention was finally granted in March 2013 and the victim was allowed to serve his sentence at home.

In July 2012, victim's lawyer filed an application to the European Court of Human Rights and expects that it would be accepted.

(ASTRA Database, ID number 2588)

- Trafficked persons are required to testify, face their traffickers and provide the main piece of evidence against them in lengthy and exhausting criminal trials which sometimes last for years and without any guarantees of their safety before, during and after the proceedings. In spite of numerous trainings, judicial professionals still do not understand human trafficking as a phenomenon nor are they able to recognize the victim and treat him/her in accordance with Serbia's international obligations. Human trafficking in Serbia is rarely prosecuted before the Special Court for Organized Crime as it is considered by law enforcement officials that serious organized criminal groups do not operate in Serbia and that trafficking occurs as a crime of an individual.
- With regard to compensation for victims of human trafficking, one of the major problems is current practice of criminal courts that refer victims/injured parties to litigation to realize their right to compensation. This practice has proven to be inadequate for the majority of victims in Serbia; consequently right to compensation as one of the basic victims' right remains without legal protection and victims themselves are left without any compensation for damages they suffered. State institutions do not put enough effort and create insufficiently harmonized policies in the area of building legislative framework and systemic measures that should ensure realization of victims' right to compensation.

Regarding article 12, paragraph 32 in the List of issues, we believe that improved access to compensation should be priority as for more than ten years of human trafficking being criminalized in Serbia, only one victim was awarded compensation.

This happened in February 2014 as a result of long and exhausting court proceedings (both criminal and civil), when the first judgment awarding compensation for victim of trafficking in Serbia was issued and executed. The Court of Appeal in Novi Sad confirmed the judgment of the Novi Sad Basic Court in civil proceedings ordering four persons, previously sentenced for trafficking in human beings, to jointly compensate the plaintiff, ASTRA's client.

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In this particular case, as is usual practice in Serbia, compensation was not awarded in criminal proceedings, but the victim was referred to litigation. In effect, the girl who was sexually exploited for years had to relive traumatic events by giving testimony and facing her traffickers in criminal trial which lasted for four years. Being referred to three-year long civil proceedings afterwards, in spite of neuropsychiatrist and psychologist's examinations conducted during the criminal proceedings, which indicated to PTSD and other consequences of human trafficking, instead of avoiding secondary victimization, the victim was once again put in the situation that her trauma was questioned and she had to sit in the same room with the persons who trafficked her. The fact that she had to be waiting for more than seven years to access justice and enjoy her right to compensation and that she thus had no possibility to put an end to her traumatic experience significantly slowed down victim's recovery. Although trafficking in human beings was criminalized in Serbia back in 2003 and right to compensation is guaranteed by both domestic legislation and international documents which Serbia signed, this is the first case in our country that the victim actually received compensation (it shall be paid out in monthly installments during two years).

Although this is an example of good practice with regard to the explanation of both first instance and second-instance judgment in civil proceedings, this clearly shows the shortcomings of this legal instrument in terms of realization and protection of rights of trafficking victims. Further this judgment is not a result of systemic improvement of access to compensation for trafficked persons, but above all of the persistence of a girl who survived human trafficking to go through four year of criminal proceedings and three years of civil proceedings.

- Cases of labour exploitation are still under investigation but without any results. Serbian legislation does not have an offence which recognizes forced labour if it is not in the context of human trafficking for the purpose of labour exploitation.
- Since minimum standards of protection of trafficked persons in the social protection system have not been adopted yet, victim assistance in Serbia is not provided following any written procedures, not to mention monitoring and quality control. Procedures and protocols for cooperation between the Center for the Protection of Trafficking Victims and NGOs are not defined, which to a great extent complicates cooperation and has negative impact on the process of provision of assistance to clients. The Centre does not refer trafficked persons it identifies to NGOs' programmes (only 1 victim referred to ASTRA in 2014) – although NGOs are only specialized assistance providers for trafficked persons in Serbia, with an explanation that trafficked persons in a great number of cases do not want assistance or that the needed assistance is entirely provided by social welfare centers, although such assistance is often insufficient, inappropriate and not always available to all victims.
- Reintegration and social inclusion of human trafficking victims are an urgent problem.
- Accommodation of trafficked person has been problematic in Serbia for years. To overcome the situation in which there had been only one shelter - Reintegration Shelter in Belgrade, with the capacity to accommodate up to 7 persons, additional two shelters – in Niš and Novi Sad – were launched in October 2011. These shelters did not function as separate shelters but were incorporated into the existing shelters for domestic violence within social welfare centres in these towns. Since they were launched on a project basis supported by foreign donors and with funding ensured for only six-month period, these shelters do not operate any longer and Serbia is still left with only one specialized facility for trafficked persons. Alternative accommodation programs does not exist either.
- Special shelters for children victims of trafficking do not exist in Serbia. Children are placed in shelters, homes for children, returned to the primary family or placed in foster care. If unaccompanied by a parent/guardian, or if parents have lost custody temporarily or permanently, children victims of trafficking are placed in institutions for children and youth, along with other groups of children.

- Although Serbia does not have a separate budget line for financing anti-trafficking actions and victim assistance yet, since 2012 certain funds were allocated from the republican budget for victim assistance services as part of the budget of the Centre for the Protection of Victims of Trafficking. However, the major portion of this amount is intended for salaries and costs of Centre's staff and for the costs of running the Centre. (Further, it is not specified how much money is spent for assistance to children and how much for adults.)
- Direct victim assistance still depends primarily on support of foreign donors, while state support is sporadic and non-systemic. It could be heard quite often that victim assistance could be provided within the existing social welfare and public health systems. However, such assistance is often insufficient, inappropriate and not always available to all victims.
- Previous Anti Trafficking National Action Plan expired in 2011 and the new one has not been adopted yet, although its drafting started in 2012. In the process of EU accession, combating human trafficking thematically belongs to negotiating chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security). In the process of EU accession action planning, it has been decided to address this issue in the Action Plan for Chapter 24. In this Action Plan, the adoption of the Anti-Trafficking Strategy is envisaged for March 2015. The absence of strategic and action documents is a significant obstacle in the realization of governmental anti-trafficking response toward improvement of the existing mechanism of victims' protection and inter-sector cooperation.

7.c. Recommendations from other bodies

CEDAW Committee Concluding Observations, 25 July 2013

The Committee recommends that the State party:

- (a) Adopt a new plan of action against trafficking in human beings without further delay;
- (b) Allocate sufficient resources to rehabilitation and reintegration programmes for women victims of trafficking; and
- (c) Establish effective cooperation with civil society organizations working in the area.

GRETA – Group of Experts on Action against Trafficking in Human Beings - Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia, 16 January 2014

23. GRETA urges the Serbian authorities to adopt measures to facilitate access to compensation for victims of trafficking. (...)

24. Further, bearing in mind that no victims of trafficking have received compensation from the perpetrators, GRETA urges the Serbian authorities to set up a State compensation scheme accessible to victims of THB regardless of their nationality and residence status.

26. GRETA considers that in order to strengthen the implementation of the non-punishment provision of the Convention, the Serbian authorities should take legislative measures allowing for the possibility of not imposing penalties on victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so, as well as issue guidance to public prosecutors advising them on the steps to be taken when prosecuting suspects who might be victims of trafficking.

7.d. Proposed questions

1. Please describe institutional framework for suppressing human trafficking in Serbia, how it works and based on what regulations/documents. When was last institutional document adopted?
2. What is the role of NGOs in the national anti-trafficking mechanism? Do NGOs have any formal role and in which way the involvement and cooperation with NGOs is formalized?
3. How many victims receive assistance in the process of recovery and social inclusion? Who provides such assistance? To what extent NGOs are included in the provision of victim assistance? Describe specialized assistance services available in Serbia (sheltering, counselling, psychological assistance, legal aid, medical assistance, economic empowerment etc.) and their capacity to respond to the needs.
4. Describe the procedure, regulations and indicators for identifying trafficked persons and granting victims' status.
5. How many persons identified as trafficking victims were prosecuted for crimes committed under coercion during the reported period?
6. How many persons identified as trafficking victims were awarded compensation during the reported period and following what procedure?

7.e. Recommendations

1. Adopt a new plan of action against trafficking in human beings without further delay.
2. Allocate sufficient resources to reintegration programmes for victims of trafficking; introduce a separate budget line in the state budget for financing anti-trafficking activities and victim assistance, including financing alternative models of accommodation.
3. Formalize and establish effective cooperation with civil society organizations working in the area; amend Serbian legislation in the way to have an offence which recognizes forced labour even if it is not in the context of human trafficking for the purpose of labour exploitation; provide effective access to compensation of material and non-material damages for trafficked persons through creating compensation fund regardless of the outcome of criminal proceeding and whether the identity of the perpetrator has been established; non-punishment of victims for their involvement in unlawful activities while they were exploited should be explicitly envisaged in Article 388 of Criminal Code of Republic of Serbia.

8. TORTURE AND ILL-TREATMENT OF VULNERABLE GROUPS

8.a. Psychiatric facilities

Article 11 and LOIPR questions 21, 24 and 25

8.a.1 Issue summary

Torture and ill-treatment in psychiatric facilities continues to be an issue of significant concern in Serbia. There are four special psychiatric hospitals in Serbia: Special Psychiatric Hospital (SPH) „Gornja Toponica“, Niš, SPH „Dr Slavoljub Bakalovic“, Vršac, SPH „Sveti Vraci“, Novi Kneževac, SPH „Kovin“ and Clinic for Psychiatry „Dr Laza Lazarevic“, with Department in Padinska Skela which is organized as asylum. Besides that there are 10 clinics and institutes and 30 psychiatric departments in general hospitals. Although all these institutions raise concerns, our main interest in the last few years has been prevention of torture and inhuman treatment in the special psychiatric hospitals.

In the last ten years, the situation in these hospitals has improved. The number of beds and the average number of days per hospitalization has been reduced and many buildings and facilities have been renovated and some activities in psychosocial rehabilitation initiated. Still, these hospitals remain subject of serious concern. There are many reports issued by international agencies, National Preventive Mechanism (NPM) and local NGOs examining the situation in these institutions.

During 2013, Helsinki Committee for Human Rights in Serbia and IAN International Aid Network performed monitoring visits to all psychiatric hospitals and Clinic “Dr Laza Lazarevic”. The main findings are presented here.

Living conditions

Living conditions in those hospitals vary from hospital to hospital and from ward to ward. Conditions in some wards are so poor and inhuman that staying there for a longer period could be considered inhuman and degrading treatment. Those conditions include overcrowded dormitories with more than 10, sometimes 20 beds, lack of lockers for keeping personal things, toilets and bathrooms without door or curtains, old and ruined premises, humidity, etc. In some wards patients are wearing pyjamas instead of daytime clothes.

Hospital	Number of patients/capacity	Average number of days per hospitalization
„Gornja Toponica“ Niš	748/800	Acute wards 30-45 days; chronic wards significantly longer
„Dr S. Bakalovic“ Vršac	821/900	180 days
„Sveti Vraci“ Novi Kneževac	286/300	89 days
„Kovin“ Kovin	699/1000	160 days
„Dr L. Lazarevic“ Belgrade	304/500	40 days

The table above shows the state in hospitals at the day of the visit regarding number of patients and duration of hospitalization. It should also be noted that in all hospitals, except the one in Belgrade, there are patients who are hospitalized for more than 10 years and some patients are there since 1950s and 1960s.

Involuntary hospitalisations are rare and patients usually sign all necessary papers. In cases when a patient does not want to sign a voluntary admission, certain legal procedures for compulsion are followed. Although patients are placed in hospitals on a voluntary basis they are not allowed to leave the hospital at their own will.

Treatment

Treatment of patients is mainly based on pharmacotherapy, while the application of psychotherapeutic methods is very limited. On wards for the treatment of neuroses and addictions certain forms of psychotherapeutic work are applied, mainly group therapy. For other patients different discussion groups, educational workshops, therapeutic communities are held. Work of psychologists in all hospitals is mainly related to psychodiagnostic, which leaves them little time for individual or group work with patients. In addition, the number of psychologists and other medical associates (social workers, occupational therapists) is insufficient; usually one psychologist and one social worker have to cover several departments (approximately between 100 and 200 patients). Individual recovery plans do not exist in all hospitals and patients themselves are not included in their creation. We can still see patients who are sedated, which leads to the conclusion that they are overdosed with medicines.

Especially alarming situation is found in hospital "Dr Laza Lazarevic" in Belgrade. Since 2012 this hospital has the status of Clinic. As a result of this change, number of beds is reduced, number of staff is increased so in comparison with other hospitals they have more health workers and associates and less patients. Living conditions are better than in other hospitals, but we have found number of shortcomings in the treatment of patients.

During the visit of the ward for intensive care we have noticed a young male patient who was sedated to the point that in a clumsy attempt to sit up from the bed he dropped by the bed. He was markedly psychomotor slowed, eyes half closed and unable to stand on his feet without assistance. Doctors explained that it was the patient who was extremely upset and who attempted suicide before the reception, was led by the police and that on arrival he demonstrated aggressive behaviour, so he had to get a sedative therapy. When asked about the therapy he received, doctors gave us sub therapeutic doses which could not be expected to cause such clinical situation. When we requested an insight into the history of the disease and treatment card, we were rejected with reference to the attitude of the administration and the obligation to keep medical secrets.

At the same ward, we observed that a middle-aged female patient has a fresh haematoma around one eye, which covers the greater part of her face and her forearm was immobilized with plaster splints. Despite attempts of the staff to prevent it, she insisted on speaking with someone from the monitoring team. One member of our team approached her and with tearful voice she told her that the injuries occurred when she was beaten by a medical technician because she refused to take her medicine. While she was at the other end of the room complaining about the treatment of medical professionals, doctor who accompanied us commented that our colleague should not be so close to that patient, because psychiatric patients can be dangerous. Also in this case, we were not provided access to medical records.

Programmes of psychosocial rehabilitation in all hospitals are poor. Some forms of work and occupational therapy are applied, but only minority of patients is included. The impression was that the individual contacts of patients and therapists were rare. Patients from closed wards have little or no access to fresh air. They are taken for a walk once a day for about 1-2 hours and majority of patients in "Dr Laza Lazarevic" hospital are not allowed to spend time outdoors at all.

Psychiatric treatment should be based on individualized approach, with individual recovery plans tailored for each patient separately. It should involve a wide range of rehabilitation and therapeutic activities including access to occupational therapy, group therapy, individual psychotherapy, art, drama, music, sport... Patients should have regular access to outdoor activities on a daily-basis. Treatment based only on pharmacotherapy, without proper psychosocial activities may not lead to patients' recovery and well-being nor prepare them for adequate return and stay in the community.

According to the assessment of staff, about half of the patients would be capable of independent living in the community. A large number of patients have no family support and no place to return to, and only for social reasons (without medical indication) remain for long periods in hospital. There is a complete lack of care for patients once they leave the hospital: there are no community centres where they can come to seek for advice or treatment, there are no organized home visits. It is very often that, after they leave, hospitals patients simply stop taking medicines, and gradually become more anxious

and develop more symptoms, which will again result in hospitalization.

There is a growing body of literature showing that the active psychosocial response from and within the community can slow the process of deterioration and can significantly improve the quality of life of those affected. But all of these are incompatible with asylum-based treatment, which in effect relies mostly on drugs and simple “containing” of patients within the institutions (explained either by safety or social reasons). And – even more importantly – we still do not have any alternative way of treatment in open, community based institutions.

Legislation

In 2013, the National Assembly of the Republic of Serbia adopted a new Law on the Protection of Persons with Mental Disorders. This Law implies establishment of special units for mental health care in the community within existing institutions (health care centres and special psychiatric hospitals). Terms of opening these units are closely explained in additional Rulebook. However, no time frame was given, nor the consequences for an institution which does not open one such unit. In Serbia, there are 4 special psychiatric hospitals and 159 health care centres. Since the Law got into force, only 4 units for mental health care in the community have started to develop.

System of financing hospitals is still partly based on number of beds (thus de-stimulating managers to reduce large departments) not on number of services, which could be gradually transferred to community.

The Law continues to support isolation and physical restraint of patients.

8.a.2. Recommendations

1. Follow up implementation of new Law on the Protection of Persons with Mental Disorders; consider making certain changes in the Law in order to provide legal framework that will secure transformation of services and development of community mental health services; change the system of financing hospitals; adopt National strategy on mental health and Action plan.
2. Investigate alleged cases of ill treatment and excessive use of force by medical staff in Clinic “Dr Laza Lazarevic” in Belgrade.
3. Improve conditions and treatment in psychiatric hospitals in a way that ensure patients’ individuality, privacy and respect of basic human rights.

8.b. Access to health care for people with HIV/AIDS in detention

Article 11 and LOIPR question 25

The spread of infectious diseases, especially tuberculosis, hepatitis and HIV has become a major public health concern in many European countries. Although affecting the entire population, these diseases represent a dramatic problem in the prison system. Depriving a person of his liberty always entails a duty of care which calls for effective methods of prevention, screening and treatment. The obligation of public authorities to fulfil this duty is even greater when it comes to the treatment of life-threatening diseases.

Using modern methods, the regular supply of medication and related materials, the availability of staff ensuring that prisoners take the prescribed medicines in the right doses at regular intervals, as well as enabling, when necessary, special diets are essential elements of an effective strategy for the fight against these diseases and providing adequate health care to inmates. Similarly, material

conditions in accommodation for prisoners with infectious diseases should enable the improvement of their condition; in addition to natural light and good ventilation, there must be satisfactory hygiene as well as an absence of capacity. Also, these prisoners should not be separated from the rest, unless required for medical or other reasons.

In order to dispel misconceptions regarding this, local authorities are obliged to provide full training on infectious diseases, and for staff and inmates. Such a program should address methods of transmission and protection, and the application of appropriate preventive measures. In particular, attention should be paid to the risk of becoming infected with HIV or hepatitis B/C through sexual intercourse and intravenous drug use and the role of body fluids as the carriers of HIV and hepatitis viruses. It must also be emphasized that the need to provide appropriate information and advice before and in the case of a positive result after each control. In addition, it is obligatory to ensure the confidentiality of all patient information.

Any intervention in this area should be based on the consent of the person concerned. In addition to control of these diseases to be effective, all the ministries and agencies working in this field must ensure coordination of its activities in the best possible way. A prison health care service should ensure that information on infectious diseases (in particular hepatitis, AIDS, tuberculosis, dermatological infections) is regularly circulated, both to prisoners and prison staff. So where necessary, carry out medical control of those with whom a particular prisoner has regular contact (fellow prisoners, prison staff, frequent visitors).

8.b.1. Issue summary

There are two key problems related to persons with serious infectious diseases in places of detention. There is no system to systematically identify persons with serious infectious diseases upon entry; the quality of health care available to persons with HIV/AIDS falls far short of what is required by the disease and in addition they face restrictions that are not justified in the need to prevent spread of the disease.

All prisoners are subjected to the first inspection at the entrance to the detention facility, where a medical history file is opened. Unfortunately, laboratory analysis involving the detection of hepatitis B, C, and HIV is not applied systematically due to financial limitations. This puts persons already affected at risk of unnecessary suffering due to lack of treatment and it puts the remaining prison population at risk of infection.

As for treatment of persons with HIV/AIDS, there is limited access to drugs and regular supervision by qualified health personnel to ensure that they are taken correctly is severely limited in many facilities. Furthermore, persons with HIV/AIDS are frequently subject to various forms of discrimination including being put in isolation as a measure to avoid them infecting others.

From the lived experiences of persons with HIV/AIDS in many places of detention, it is clear that these problems individually and in combination do engage State responsibility for practices that amount to cruel, inhuman or degrading treatment.

In general, the different State agencies assigned to deal with this issue does have the sufficient expertise and protocols in place to be effective. There are strategies and action plans focused on the fight against drug addiction, prevention and treatment of tuberculosis, HIV / AIDS and other infectious diseases and the Department for Execution of Criminal Sanctions actively participated in the adoption of these. Rather, the main problems relate to lack of available funding and problems with assignment of responsibilities. The lack of effective screening systems appear to be caused by budgetary constraints while the lack of effective treatment mainly appear to be a problem related to coordination between the Ministry of Health who employs health staff in places of detention and thus holds most of the expertise in this area and the Ministry of Justice who is responsible for procurement of medicines for places of detention and the general administration of the facilities.

8.b.2. Recommendations:

1. Work towards the establishment of inter-sectoral cooperation to start a process of consultation and dialogue that would allow the availability of drugs and regular treatment of persons who are in places of detention and correctional institutions serving a prison sanction at the expense of the health system of the Ministry of Health. Currently funding of medicines is charged Judicial System (Ministry of Justice) and often lead to shortages due to lack of timely procurement.
2. Provide an independent budget line of the Ministry of Health, which would be designed to enable the treatment of persons who are serving prison sanctions.
3. Restore, at least partially, testing on admission for HIV, hepatitis B and C.

8.c. III-treatment of women

Articles 2, 11 and 16 and LOIPR questions 6, 24 and 35

8.c.1. Prevention of violence against women

After the ratification of Council of Europe Convention (October 2013)⁵⁶ and it's coming into force in August 2014⁵⁷, and concluding recommendations of the UN Committee on elimination of all forms of violence against women (CEDAW)⁵⁸ from July 2013, the state of Serbia still hasn't change it's legislative in the area of violence against women. Council of Europe Convention had been ratified with stating reservation on two articles: compensation of victims and jurisdiction. Coordination body for Gender Equality of the Government of Serbia was appointed as body that will monitor the implementation of the Convention, but still there aren't any activities aimed at implementation of the Convention. Number of cases rise from year to year, without adequate state response. Negative trend of femicides in family and partner relationships continued in 2015. What is particularly alarming is the case of a femicide in the premises of a prison in Niš, when ex-partner strangled his ex-wife when she came to prison to ask for his permission to take their child abroad. The Action Plan for the Implementation of National Strategy for Prevention and Combating Violence against Women, which expire in 2015, was never created. Autonomous province of Vojvodine adopted (December 2014) Programme (Strategy) for the protection of women from domestic and violence in partner relationships for the period 2014-2020⁵⁹.

In it's report CEDAW Committee remains concerned about⁶⁰:

- The increasing number of women murdered by their husbands, ex-husbands or partners and women victims of other forms of violence...⁶¹: The number of women who were killed by their partners drastically increased in 2013⁶², and this trend is visible also in first three months of 2015 – 7 women had been killed, 1 survived being burned by her husband and 1 is still in coma. Serbia still has no official data on femicide and there is no adequate state reaction prior to the incident or after. The Republic Ombudsman is the only institution which conducts enquiries and issues recommendations in

56 Official gazette of RS – International documents, no. 12/2013

57 <http://www.potpisujem.org/eng/781/the-istanbul-convention-enters-into-force-on-1-august-2014>

58 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSRB%2fCO%2f2-3&Lang=en

59 Available only in Serbian at http://www.vojvodina.gov.rs/sites/default/files/Program_za_borbu_protiv_nasilja.pdf

60 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSRB%2fCO%2f2-3&Lang=en

61 Par. 22 (a) of the CEDAW Concluding Observations

62 in 2010 - 26, in 2011 - 29, in 2012 - 32, in 2013 - 43 and in 2014 – 27 women had been killed by their partners or family members; available at http://www.zeneprotivnasilja.net/images/pdf/FEMICIDE_Statement_for_2012.pdf and only in Serbian at http://www.zeneprotivnasilja.net/images/pdf/FEMICID_Saopstenje_za_2013_godinu.pdf; http://www.zeneprotivnasilja.net/images/pdf/FEMICID-Saopstenje_za_2014_godinu.pdf

cases of femicide⁶³.

- The significant disparity between the number of police interventions, the number of criminal charges filed and the number of persons convicted⁶⁴: There are no publicly available (or detailed) data on number of reported incidents of violence against women and interventions of the institutions in charge. Administrative data bases for the different system (institutions) can't be mutually compared. According to data from Police directorates⁶⁵ in 2011 there had been 19.819 reports/incidents of domestic violence, which resulted in filing 5.460 misdemeanour charges (27,5%) and 3.014 criminal charges (15,2%)⁶⁶. According to Republic Statistical Office, 3.550 criminal charges were filed against adult persons for the act of domestic violence in 2011 and 1.616 adults were convicted, but the numbers can not be fully compared⁶⁷. Mild sentencing policy can be seen in large number of issued suspended sentences (1.135 or 70,2% from all criminal cases) and in only 360 prison sentences. Prosecution offices, by frequent use of deferred prosecution for the criminal act of domestic violence, and ordering the suspects to pay a monetary fine in the humanitarian purposes, are returning monetary sanction for this criminal act⁶⁸.

- the lack of emergency protection orders ⁶⁹: There are no emergency protection measures that can be issued immediately or 24 hours at the latest in accordance with the article 52 of the CoE Convention. Only in 20% of cases the judgments for protection measures in accordance with the Family law are reached within one month after filling civil suit, and a significant number of judgments for protection measures in civil proceedings are issued after 3 or even 6 months⁷⁰. The civil court has no legal obligation to submit imposed protection measures to the police (police filed only 14 criminal charges for the breaches of protection measures in 2011⁷¹). Social services initiate only 3,4% and Prosecution offices only 1% of civil proceedings for the issuance of protection measures⁷² (only 7 basic Prosecution offices out 33)⁷³.

- The lack of desegregated data on all forms of violence against women ⁷⁴: The Republic Statistical Office doesn't collect data on the type of relationship between the victim and the perpetrator. The judiciary statistics regarding the proceedings for protection measures is lacking data⁷⁵. Police does not register murder of a woman in a situation when a killer commits suicide.

- Review and revise the Criminal Code, the Family Code and other relevant laws with a view of

63 Recommendations in cases of femicide and VAW are available only in Serbian at http://www.ombudsman.rodnarodnopravnost.rs/index.php?option=com_content&view=category&layout=blog&id=21&Itemid=26&lang=sr

64 Par. 22 (b) of the CEDAW Concluding Observations

65 Data received on the request of the Autonomous Women's Center based on Law on publicly available data (Data weren't delivered by PD of Sombor, so the cited number of reports can not be considered to be the total number of reports of family violence in Serbia in 2011).

66 Ignjatovic, T. in Annual Report of the Independent Observatory on VAW (pg. 29-45), available on http://www.zeneprotivnasilja.net/images/stories/opservatorija/Annual_Report_of_the_Observatory_2012.pdf

67 Available at <http://vebrzs.stat.gov.rs/VebSite/Public/PageView.aspx?pKei=14>

68 In this way the victim is put in higher risk of experiencing repeated violence having in mind that the victim will bear the cost of this monetary fine, which is direct breach of the article 48 of the ratified CoE Convention – Prohibition of mandatory alternative dispute resolution processes or sentencing

69 Par. 22 (d) of the CEDAW Concluding Observations

70 Available only in Serbian at: http://www.womenngo.org.rs/images/publikacije-dp/Porodicnopravna_zastita_od_nasilja_u_porodici_u_pravosudnoj_praksi_Srbije.pdf

71 Data received based on the request for publicly available data from the Ministry of Interior.

72 Available only in Serbian at: http://www.womenngo.org.rs/images/publikacije-dp/Porodicnopravna_zastita_od_nasilja_u_porodici_u_pravosudnoj_praksi_Srbije.pdf

73 Macanovic, V. in Annual Report of the Independent Observatory on VAW (pg. 74-89), available on http://www.zeneprotivnasilja.net/images/stories/opservatorija/Annual_Report_of_the_Observatory_2012.pdf

74 Par. 22 (e) of the CEDAW Concluding Observations

75 Macanovic, V. in Annual Report of the Independent Observatory on VAW (pg. 74-89), available on http://www.zeneprotivnasilja.net/images/stories/opservatorija/Annual_Report_of_the_Observatory_2012.pdf

effectively preventing all forms of violence against women and protecting victims ⁷⁶: Criminal Code still doesn't incriminate stalking, sexual harassment, female genital mutilation, forced marriages, and forced sterilization as criminal acts ⁷⁷ and needs to be harmonized with CoE Convention with regard to the definition of domestic violence victims and the criminal act of rape (definition, prosecution of marital rape). Protection orders in criminal proceedings are still scarcely used and many of the rights for the victims in criminal proceedings still don't exist (victim's support services, person of trust, right to appeal). The new Criminal Procedure Code prescribes that victim can be granted the status of a special vulnerable victim, and if granted, the special rules on the protection of a victim during testimony could be applied, and the victim could have the right to free legal representation. This status is rarely granted due to lack of funds for free legal representation and lack of knowledge. Also, courts/prosecution offices don't have IT technology for audio-visual possibilities to interview the victims outside courtrooms. During criminal proceedings victims can be protected by a protection order of restraining and communication (art. 197-198), which is also rarely used. The Criminal Code prescribes only one security measure – the restraining and communication order (art. 89a) which represents the protection of victims of criminal acts after the end of the criminal proceedings, which can last at least 6 months and up to a maximum 3 years. Both measures don't have exception in cases when the offender and the victim live in the same household. There is also a suspended sentence with supervised protection (art. 71-76 of the Criminal Code), and all these measures are rarely implemented in practice. All four Special protocols on action of relevant institutions in cases of violence against women in family and partner relationship are adopted, but without regular implementation monitoring system.⁷⁸ There is no General or Specialized Protocols for actions of the institutions in cases of rape or other sexually assaulted victims, nor Rape Crisis Centres.

Autonomous Women's Centre filed a Constitutional Claim in the case¹ of a criminal offence of marital rape because the suspect was acquitted by the final decision of the Belgrade Appeal Court. The discriminatory attitude of a first instance judge toward the victim of domestic violence was pointed out, as well as the discriminatory practice of the Belgrade Appeal Court which did not notify the victim of the day when the public hearing before the Appeals chamber is to be held in the situation when the victim required that. This case demonstrates how far criminal legislation is from the standards envisaged by all international documents on the minimum rights of the victims.

¹ Case number UŽ. 5510/2014.

- Ensure that all women victims of violence have adequate assistance and unhampered access to effective protection from violence, including by ensuring sufficient number of shelters funded by the state budget and improving the cooperation with relevant non-governmental organizations in this respect⁷⁹: In Serbia there is no form of state victims assistance program. There are no services that provide help to victims in the premises of courts and prosecution offices. Criminal legislative still doesn't recognize the institute of "person of trust". There is no systematically organized support to victims during and after the criminal proceedings in accordance with the article 56 of the ratified CoE Convention. Because the Law on free legal aid still hasn't been adopted after more than 10 years of various drafts of various working groups, women and children victims of domestic violence, and other vulnerable victims in Serbia, are unable to achieve best suitable protection of their rights. Civil society organizations that provide free legal aid had sent multiple times their comments and suggestions on

⁷⁶ Par. 23 (a) of the CEDAW Concluding Observations.

⁷⁷ Forms of violence against women as defined by the CoE Convention.

⁷⁸ In Special Report of the Ombudsman on the implementation of the General and Special protocols on protection of women against violence it is stated that „Caseworkers are not fully informed about the existence and contents of the General and Special Protocols; there are still bodies and institutions whose employees are aware neither of the adoption of the protocols, nor of their purpose,„ (Assessment 1. of the situation.) Available at <http://www.ombudsman.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/3711-special-report-of-the-protector-of-citizens-on-the-implementation-of-the-general-and-special-protocols-on-protection-of-women-against-violence>

⁷⁹ Par. 23 (d) of the CEDAW Concluding Observations.

the draft versions of the Law on free legal aid⁸⁰. The National Assembly, convening during the state of floods and emergency, adopted amendments to the Civil Procedure Act⁸¹, without previous public debate and under urgent procedure, limiting in article 85 the right of citizens to choose attorney in civil proceedings. A similar regulation was declared unconstitutional in 2013 by a decision of the Constitutional Court⁸², in which way not only is the right of citizens in access to courts, legal aid and fair trial jeopardized, but the right to legal security as well. A new Constitutional challenge⁸³ was made to this article of law. There are no public available data on the general and specializes support services for the women victims of violence. These services are in the jurisdiction of local municipalities (assessing the demand and financing) which led to constant changes whether these service exist and in standards of quality. Serbia doesn't have national SOS hotline for women victims of violence (free of charge and available 24/7). On the territory of Vojvodina free of charge SOS hotline for women victims was established in 2012⁸⁴. According to the database of the Republic Institute for Social Protection⁸⁵, there are 17 SOS hotlines for the victims of DV, 14 which are run by state social services and 3 by women NGOs. This data was checked and discovered to be false⁸⁶. According to the information given by the network Women Against Violence, women's NGOs have 22 SOS hotlines for female victims of violence, very experienced, which have worked for years⁸⁷, which don't receive (or only occasional and insufficient) financial support from local governments, causing 4 SOS hotlines to close down in 2011. 26 women's NGOs, members of the network Women against Violence, provide gender-specific counselling for women survivors of male violence, among which 24 provide free legal counselling for female survivors of violence⁸⁸.

Serbia doesn't have Rape crises centers in which specialized and free medical, psychological and legal aid would be provided in one place, in accordance with the articles 24 and 25 of the ratified CoE Convention⁸⁹.

In 2014, there are only 13 women's shelters (safe houses and shelters) in Serbia – 11 run by the state social service⁹⁰, and 2 run by NGOs. In 2015 another Safe house was opened in Vranje (south Serbia). Based on the CoE Convention, approximately 719 shelter places are needed in Serbia and the data of

80 Additional information are available at http://womenngo.org.rs/images/pdf/vesti-14/General_comments_to_proposed_Draft_Law_on_Free_Legal_Aid_Letter_30122014.pdf

81 <http://www.parlament.gov.rs/upload/archive/files/cir/doc/zakoni/2014/1357-14.doc>

82 <http://www.praxis.org.rs/index.php/sr/praxis-in-action/access-to-justice/item/600-constitutional-court-established-that-the-provisions-of-the-article-85-paragraph-1-stating-%E2%80%9Cwho-must-be-the-lawyer%E2%80%9D-article-85-paragraph-2-and-articles-494-through-505-of-the-civil-procedure-law-are-not-in-accordance-with-the-constitution>

83 <http://www.praxis.org.rs/index.php/sr/praxis-in-action/access-to-justice/item/794-praxis-submitted-the-initiative-for-the-assessment-of-the-article-85-paragraph-2-of-the-law-on-civil-procedure>

84 On November 16th, 2012 and it is run by women's NGOs gathered around the Network of Women's Hotlines in Vojvodina.

85 Available in only in Serbian at http://www.zavodsz.gov.rs/index.php?option=com_content&task=view&id=240&Itemid=240

86 Conducted by Network Women against Violence in February 2012, information available only in Serbian at <http://www.zeneprotivnasilja.net/vesti/170-mreza-zene-protiv-nasilja-zavodu-za-socijalnu-zastitu-povodom-rada-sos-telefona-pri-centrima-za-socijalni-rad>

87 Two SOS hotlines for victims of trafficking, 4 specialized for women with disabilities, and 3 available for women speaking languages of national minorities

88 List of women NGOs available in English at <http://www.zeneprotivnasilja.net/en/about-us/list-of-ngos>

89 all data available on the web site of the Network Women Against Violence that run the 16 days of activism campaign dedicated to the issue of rape, <http://www.zeneprotivnasilja.net/en/16-days-of-activism/campaign-2013>

90 According to the official state data in the Data base of services of social protection on the web site of the Republic Institute for Social Protection, in Serbia exist 3 Safe houses (Zrenjanin, Zajecar and Sabac) and 2 Shelters for women and children victims of DV (Kragujevac and Leskovac) that are run by the state social service

only 5 Safe houses that are publicly available ⁹¹ show that they can accept 162 women and children⁹². The Safe house in Zrenjanin is also for the victims of trafficking. Not all safe houses/shelters are free of charge for women and children⁹³. The Law on social housing does not recognize victims of domestic violence as beneficiaries of social housing, nor does it give domestic violence victims the priority of applying for social housing or emergency procedure. When it comes to monetary aid, only the City of Belgrade gives domestic violence victims monetary aid for one year from the first time that violence was reported⁹⁴. Amendments and supplements to the Criminal Procedure Act⁹⁵ which were also adopted without previous public debate and under urgent procedure, during the state of emergency, stipulate that the money obtained by applying the institute of prosecutorial deferral is no longer paid directly to charity, but into the fund of the Ministry of Justice. In this manner, special and rare funds for victims of domestic violence suffered losses, as that was the way they obtained means to help this category of population. The Ministry of Justice still has not passed secondary legislation regarding the Ministry's fund into which the money is to be paid by applying the institute of prosecutorial deferral, neither has the Commission been formed to manage this fund. The right to medical help (psychologist, psychiatrists, therapists) is regulated by the Law on medical protection and there are no specialized experts for providing help to adult victims of rape and other sexual acts and domestic violence.

8.c.2. Conditions of detention for women

Prison for women in Požarevac is the only prison for women in Serbia⁹⁶ in which women that were sentenced in misdemeanour and criminal proceedings, either as adults or minors are taken to. These bring into question the acknowledgement of women's rights and lessen their possibilities to maintain contact with their families (especially children) and other close relatives. Although the Law on execution of criminal sanctions envisage that women should also be placed in open type prison, because of the fact that Women prison in Pozarevac has high wall around the building, all women (unlike men) are in reality placed in closed type prison. Even though the capacity of the prison is 260 persons, in 2013 the prison had 272 women – 255 criminal and 17 misdemeanour sentenced, out of which one was disabled woman and 2 foreigners. In 2012 the prison personal had to use measures of force toward 6 women; there have been 3 death cases; toward 13 women special measures had been conducted (temporary deprivation of personal things, accommodation with supervision, testing for diseases and drugs); toward 116 women disciplinary measures had been issued (solitary confinement, deprivation of special rights, limitation of receiving packages, verbal warnings); women in prison filled 4 complaints; legal aid was given 84 times; 9 women had been transferred to other institutions.

It was determined that prison accommodation conditions (especially in closed department) are ruined, that there is moist on the walls of the bedrooms, as well as cracks in the walls; toilets in all parts of the prison are ruined with unsuitable plumbing equipment. It was also determined that there is insufficient number of security personal and lack of appropriate technical devices for maintaining peace in prison. It was recommended to enhance conditions in working area, gym (which was out of order and ruined), as well premises for cultural activities. Additional attention was recommended to educate illiterate women about their rights and to check if they understood them. The efforts to educate women in prisons had been praised. It was noted that doctors don't perform regular periodic examinations of

91 only in Serbian

http://www.sigurnakuca.net/fond_b92_protiv_nasilja/izgradnja_sigurnih_kuca/sigurne_kuce_kao_mehanizam_zastite.202.html

92 Belgrade-75 places, Novi Sad-20 places, Zrenjanin-20 places, Sombor-22 places, Pancevo-25 places.

93 research data was published in AWC publication Initiatives for follow up social policies available only in Serbian at http://www.womenngo.org.rs/images/publikacije-dp/2013/Inicijativa_za_pracenje_socijalne_politike.pdf

94 Art. 68 par. 4 of the Decision on the rights and services of social protection ("Official gazette of the City of Belgrade", no. 55/2011, 8/2012 – corrigendum, 8/2012, 42/2012, 65/2012 i 31/2013)

95 <http://www.parlament.gov.rs/upload/archive/files/cir/doc/zakoni/2014/1353-14.doc>

96 Monitoring report of the National torture preventive mechanism (71-66/13; october 2013); available only in Serbian on: http://www.ombudsman.rs/attachments/3218_IZVESTAJ%20POZAREVAC%20ZENE%20final.pdf

women in prison. Medical reports after the use of force are not consisted of women's statement and her opinion on how the injury occurred, nor the doctor's opinion on the connection between used force and the injury. The doctor doesn't report to the manager of the prison about the quantity and quality of the food.

8.c.3. Attacks on women human rights defenders Article 16

Attacks on women human rights defenders, for instance Women in black, are continuing without adequate response from the judiciary⁹⁷, but also without state efforts to change the public opinion regarding women human rights defenders in Serbia. Security of LGBT persons is still at high risk. Organizing Pride, as in previous years, depends on the risk assessment, which is unknown until the last minute. Participant of the latest Pride in Belgrade, German citizen, had been attacked in the centre of the city and seriously injured.

8.c.4. Recommendations

1. Create a regular multisectoral government team consisted of all relevant state and non-state actors for the in-depth analyses of cases of femicides, in order to establish and implement the responsibility of public officials for acts of omissions. Create unique safe data base in order to determine relationship between victim and a perpetrator, risk assessment and state officials in charge of the protection.
2. Systematically establish and develop multisectoral institutional cooperation and integral intervention for supporting victims during and after leaving the situations of violence. Establish the model of unique, administrative data base of domestic and sexual violence in all relevant services. Establish and implement the responsibility of public officials for the acts of omission while performing their public service. Improve definitions of criminal act and protection of women from all forms of violence, in accordance with the international standards. Amend the Criminal Procedure Code, so that vulnerable groups of victims get guaranteed greater protection rights within criminal proceedings. Change the definition of rape to non-consensual act. Equalize conditions for rape indictments, regardless of the type of relationship of the victim and the perpetrator. Create general and special Protocols on institutional proceedings in cases of sexual violence.
3. Provide long term financing within the budget of the Republic of Serbia (both at the national and local levels) for the work of women's nongovernmental organizations that deal with domestic violence and other forms of gender based violence against women. Establish clear and transparent procedures for allocation of state funds to services for women by imposing conflict of interest clause. Amend the Laws in order to prioritise services for women victims of violence over perpetrator programs.
4. Provide better protection for women human rights defenders in public and within the judicial system.