**REPUBLIC OF SERBIA**
**PROTECTOR OF CITIZENS**
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B e l g r a d e

Protector of Citizens
Ombudsman

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# OBSERVATIONS ON IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT IN THE REPUBLIC OF SERBIA

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The Protector of Citizens (Ombudsman), as an independent and autonomous authority mandated to control the legality and regularity of operations of public authorities with respect to the exercise of individual and collective rights of citizens and to protect and protect human and minority freedoms and rights of citizens, and in the capacity of an accredited "A status" National Institution for the Protection and Promotion of Human Rights,

- starting from the complaints hitherto received, handled and resolved, as well as the facts learned through his activities performed in the capacity of the National Preventive Mechanism against Torture (NPM) and cooperation with other authorities,

- having regard to the Second Periodic Report of the Republic of Serbia on Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and aiming to avoid repeating the points already made therein,

- assured that full and unbiased evaluation of the level of respect for human rights is key for proper focusing of activities carried out by government and other entities to improve the existing situation, which is an ongoing issue,

hereby submits to the United Nations Committee against Torture his observations regarding the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment in the Republic of Serbia.

## THE OBSERVATIONS OF THE PROTECTOR OF CITIZENS ON IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT IN THE REPUBLIC OF SERBIA

The Protector of Citizens provides his observations with regard to the implementation of the Convention in the form of answers to the List of issues prior to the submission of the second periodic report of Serbia, issued by the Committee against Torture.

The Protector of Citizens provided answers to those questions (issues) that he possesses relevant information on.

***1.*** *With reference to the Committee's previous concluding observations (para. 5) , please provide detailed information on the measures taken to adopt a definition of torture in domestic penal law consistent with article 1 of the Convention, and which also includes appropriate penalties taking into account the gravity of the offence. Please also indicate the legislative measures taken by the State party to repeal the statute of limitations for crimes involving torture. If this has not yet taken place, please explain the reasons why.*

The Protector of Citizens paid special attention to the question whether the definition of torture stipulated in Article 1 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been transposed fully into criminal legislation of the Republic of Serbia.

The Criminal Code of the Republic of Serbia prescribes criminal offenses of extortion of confession (Article 136) and ill-treatment and torture (Article 137), definitions of which contain elements of torture. The basic form of the criminal offense of extortion of confession (paragraph 1 of Article 136) shall be committed by the person who acting in the discharge of his/her 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, forensics expert or another person. This form of the criminal offense is punishable by imprisonment for a term between three months and five years. Extortion of confession (paragraph 2 of Article 136) shall be aggravated by extreme violence, or if extortion of confession or statement results in particularly serious consequences for the accused in criminal proceedings. This form of the criminal offense is punishable by imprisonment for a term between two and ten years.

The basic and aggravated forms of the criminal offense of ill-treatment and torture (Article 137), pursuant to the solution in the Serbian criminal legislation, may be committed by any person, regardless of whether the person is acting in an official capacity or not, or whether the person is instigated by, or acting upon express or tacit consent of, an official. The gravest form of ill-treatment and torture (paragraph 3 of Article 137) shall be committed by a person who acting in the discharge of his/her official capacity ill-treats another or treats him/her in a manner that offends his/her human dignity, which shall be punishable by imprisonment for a term between 3 months and 3 years. This form of ill-treatment and torture shall be also be committed if a person acting in the discharge of his/her official capacity uses force, threats, or in another inadmissible manner causes severe pain or anguish to another, with the aim to obtain a confession, statement or another piece of information from him/her or a third person, or to intimidate or unlawfully punish him/her or a third party, or if such actions are motivated by any form of discrimination. This form of the criminal offense is punishable by imprisonment for a term between one and eight years.

With regard to the above, there is the issue of qualification of the offense (commission by omission) committed by the official who, knowing that another person is committing or intends to perform an action, referred to in Articles 136 or 137 of the Criminal Code, fails to take necessary measures to prevent or stop torture. Therefore, taking into account the definition of torture under the Convention and the said provisions of the Criminal Code, the Protector of Citizens believes that the criminal legislation of the Republic of Serbia needs to prescribe as a special form of criminal offenses, referred to in Articles 136 and 137, the failure of the official to take necessary measures to prevent or stop the offense, referred to in Article 136 or Article 137 of the Criminal Code, if the offense is committed or attempted.

The Criminal Code provides for and prohibits torture, inhuman and degrading treatment, force, threat, coercion, deception, medical procedures and other means which are applied to influence free will of another, or extort a confession, or another statement, or action from an accused or another party to the proceedings (Article 9) and prohibits the use of evidence obtained in this manner in criminal proceedings (Article 84 in conjunction with Article 16).

The Republic of Serbia has not taken actions to abolish the statute of limitation for criminal offenses referred to in Articles 136 and 137 of the Criminal Code. The statute of limitation for prosecution for these criminal offenses is governed by the general conditions for the statute of limitation prescribed by the Criminal Code. Pursuant to Article 103 of the Criminal Code, criminal prosecution for the criminal offense referred to in paragraph 1 of Article 136 shall be instituted not later than 5 years after the date on which the criminal offense was committed, for the criminal offense referred to in paragraph 2 of Article 136 not later than 10 years after the date on which the criminal offense was committed, and for the criminal offense referred to in paragraph 3 of Article 137 not later than 3 years (if the person acting in the discharge of his/her official capacity ill-treats another or treats him/her in a manner that offends his/her human dignity) or 10 years after the date the criminal offense was committed (if the person acting in the discharge of his/her official capacity applies force, threats or in another inadmissible manner causes severe pain or anguish to another, with the aim to obtain a confession, statement or another piece of information from him/her or a third person, or to intimidate or unlawfully punish him/her or a third party, or if such actions are motivated by any form of discrimination).

**2.** *In light of the Committee's previous concluding observations (para. 6), in which it expressed concern about the inadequate access of detainees to doctors and lawyers and the opportunity to contact their families, and considering the follow-up information submitted by the State party on 3 February 2010 (CAT/C/SRB/CO/1/Add.1), please provide further information on the steps taken, and procedures in place, to ensure that:*

*(a) All detainees undergo a medical examination within 24 hours of detention; and that medical records noting injuries which are consistent with allegations of ill-treatment are systematically brought to the attention of the relevant prosecutor. How are detainees made aware of their right to demand an independent medical examination by a doctor?*

In the course of detention on police premises persons shall be entitled to a medical examination by a doctor of their choice. As a rule, medical examinations of detainees are performed upon the detainees' request following the application of coercive means, and in case the person has sustained visible injuries. Detainees are informed of their rights orally or via an information sheet which is, as a rule, provided when they are taken to police custody. The issue that the NPM has observed in relation to medical examination of detainees is that, in most cases, the examinations are conducted in the presence of police officers, which constitutes a violation of detainees' privacy during a medical examination and doctor-patient confidentiality on one hand, and limits of his/her opportunities to report all injuries and the manner in which they were sustained, i.e. whether they were caused by coercive means used by the police, on the other hand. Such police conduct, although contrary to applicable standards, has been introduced as mandatory under the Instruction on the Treatment of Arrested and Detained Persons, passed by the Minister of Interior. It will be two years now since the Protector of Citizens started to point out the necessity to amend the Instructions in various recommendations, however it is evident that there is no willingness to amend the said provision which is contrary to applicable standards. In addition to the provision, the said Instruction contains numerous other provisions which are not aligned with applicable standards, one of them being that all apprehended persons who are transported are always to be tied, and that an alarm button to contact the duty officer is not necessary if the detention premises are equipped with video surveillance. In addition, a significant hindrance to proving potential torture cases is the fact that these medical examinations are not complete examinations, i.e. the doctor does not examine all body portions, and that medical examination reports do not contain a detailed description of potential injuries, persons' statements on the manner the injuries were sustained, nor the cause and effect relation between the described injury and a person's statement on the manner in which it was sustained. Examination by emergency services in police stations is a specific issue. Medical examination or provision of medical care by emergency services in urgent or emergency cases is beyond dispute. However, there is the issue of who shall perform the medical examination upon the detainee's request (in accordance with applicable legislation emergency service shall provide medical care only in in urgent or emergency cases).

Medical examination upon admission of persons (both convicted and detained) to correctional facilities is mandatory. In line with the observed deficiencies, the Protector of Citizens has recommended that, if the prison doctor finds facial injuries upon admission to the facility and if the person declares that the injuries were sustained during police arrest or in police custody, if it was ordered before detention, the facility is to immediately bring it to the attention of the competent prosecutor's office. The problem observed in smaller prisons is that many of them do not employ doctors on permanent staff; doctors are engaged under a service contract and come to the prison occasionally, so it may happen that a medical examination cannot be conducted immediately upon admission. In addition, pursuant to the Law on Enforcement of Criminal Sanctions, medical examinations are also obligatory after every use of coercive means against persons serving a sentence of imprisonment or detention. What has been observed as a problem is the fact that prison doctors do not include statements about the manner in which injuries were sustained or the doctor's opinion on the link between the applied means and the resulting injuries in their medical examination reports. Doctors' role in the protection against torture has further been weakened by the fact that doctors working in facilities for the enforcement of criminal sanctions are employed by the Directorate for the Enforcement of Criminal Sanctions. With regard to this systemic and general problem, the Protector of Citizens has in several of his reports pointed out and recommended to put the doctors working in the facilities under the auspices of the Ministry of Health. In addition, there is the frequent problem of prison guards' presence during medical examination, which reduces the opportunities for detailed and objective examination which should be conducted by the prison doctor.

*(b) All persons deprived of their liberty are guaranteed free legal aid if in need of such support. Please clarify how soon detained persons are permitted to meet with their lawyers, and who makes this decision. Is it at the moment of apprehension or the moment when charges are laid, or an indictment confirmed?*

Pursuant to the Criminal Procedure Code, persons held in police custody may engage a defense counsel of their own choice, and if no defense counsel is chosen, the defense counsel shall be appointed by the court. The roster of attorneys is held by all police stations and the attorneys are summoned according to the order on the roster. However, due to irregular payment of fees of court appointed defense counsels, it often happens that a great number of attorneys on the roster avoid responding to the summons to appear at court, so that only one or several respond to the summons. However, it can also create conditions for the emergence of ''privileged attorneys'' with close ties with the police, who are more often engaged, and whose primary goal is to maintain a good relationship with the police rather than to protect the rights and interests of persons deprived of liberty. In addition, since the introduction of prosecutorial investigation under the new Criminal Procedure Code, which stipulates that the detention in police custody shall be ordered by the public prosecutor, in the Republic of Serbia there is still no common practice for determining who shall summon the court appointed defense counsel, and from whose budget shall the defense counsel be paid (whether from the budget of the Ministry of Justice or the Ministry of Interior).

*(c) All persons deprived of their liberty who do not understand Serbian are provided with the services of an interpreter.*

As regards the hiring of interpreters, during the visits to police stations, NPM has found that court interpreters are hired very rarely and police officers have reported that their engagement is a great problem due to the inability to cover their fees.

**3.** *Please provide details on the steps taken to establish an independent and external oversight mechanism for alleged unlawful acts committed by the police, as recommended by the Committee in its previous concluding observations (para. 6). According to the follow-up information provided by the State party , article 170 of the Law on Police states that the external oversight of the work of the police shall be exercised by the National Assembly, the Government, competent judiciary bodies, bodies of State administration with authority to perform oversight duties and other legally authorized bodies. Please provide detailed information on the oversight mandates entrusted to the above-mentioned State institutions and bodies, as well as the procedures in place, frequency of oversight activities and results.*

Internal oversight of the lawfulness of the work of the police, particularly with regard to the compliance with and protection of human rights while carrying out police duties and exercising police powers, shall be performed by the Internal Affairs Sector of the police – an independent organizational unit of the Ministry of Interior outside of the General Police Directorate.

External oversight of the work of the police, pursuant to the Law on Police, comes down to annual reports submitted by the Minister of Interior, and intermediate reporting on the work of the police at the sittings of the Defense and Internal Affairs Committee of the National Assembly. Oversight of the work of the police via the report submitted by the Minister to the National Assembly cannot be considered particularly effective when it comes to the fight against impunity for torture.

As you are already aware, in the Republic of Serbia the Protector of Citizens, as an independent public authority who is protecting the rights of citizens and exercising the oversight over the work of public administration, also exercises the oversight over the use of coercive means by the police in the line of duty. The Protector of Citizens may act upon complaints submitted by citizens or ex officio when on the basis of obtained information he estimates that human freedoms or rights have been violated by an action, undertaking or omission. In the past years, the Protector of Citizens established several cases of torture. In one case it was not established that the person who was taken in police custody had any injury at the moment of deprivation of liberty. However, after being held in police custody and upon admission into a detention facility, in the course of a medical examination numerous injuries were found on the body of the person deprived of liberty. On those grounds the Protector of Citizens established that the injuries were sustained in police custody. It is alarming that the case of ill-treatment was neither established by the competent internal oversight bodies nor was it brought to the attention of the prosecutor's office, and what is particularly alarming is that, following the Protector of Citizens' recommendations, neither was an

efficient investigation instituted nor was the individual liability for the said actions of police officers ascertained. Therefore, the Protector of Citizens issued a recommendation to all prisons, i.e. facilities for enforcement of criminal sanctions, to notify the competent prosecutor's office without delay about any findings that a person who is being transferred for the purpose of serving a sentence of detention, or imprisonment, was ill-treated in the period from his/her deprivation of liberty until admission into a facility.

In this regard, the Protector of Citizens pointed out in his Annual Report for 2013 that it would appear that timely and thorough measures are not always taken to investigate all substantiated allegations of ill-treatment and ascertain individual liability of involved police officers, and to ensure full compliance of public authorities with their mandate to fight against impunity for torture.

In addition to the oversight, the Protector of Citizens also carries out preventive visits in the capacity of the National Preventive Mechanism against Torture (NPM).

With regard to the fight against impunity for torture, it is important to note that in October 2013 the Constitutional Court of the Republic of Serbia for the first time ruled that an inmate's right to inviolability of physical and psychological integrity had been violated and the applicant was entitled to non-pecuniary damages, taking into account the established case of torture and the recommendation of the Protector of Citizens addressed to the competent authorities.

In addition, on 23 October 2014, the National Assembly adopted the Conclusion regarding the Consideration of the Report on the Work of the National Preventive Mechanism against Torture for 2013, which obliges the competent authorities to carry out their duties in the fight against impunity for torture in full, to take all necessary measures and actions to prevent ill-treatment, and, in accordance with the law, to conduct timely and thorough procedures to examine all substantiated allegations of ill-treatment, ascertain liability and penalize the perpetrators.

***4.*** *Further to the Committee's previous concluding observations (para. 7), and noting the recommendation adopted by the Sub-Committee on Accreditation of the International Coordinating Committee of National Human Rights Institutions to grant an "A status" accreditation to the Protector of Citizens (Ombudsman), please provide information on the human and financial resources allocated for the effective functioning of this national human rights institution. Please provide information on the activities and achievements of the Office of the Protector of Citizens with respect to prevention of torture and other cruel, inhuman or degrading treatment and punishment during the period 2008-2012. This information should include statistics on the number and types of complaints received by the Office of the Protector of Citizens as well as the outcome of any complaints of torture and ill-treatment.*

The Protector of Citizens was granted an "A status" accreditation for the period 2010-2015 by the International Coordinating Committee of National Human Rights Institutions. The Protector of Citizens submitted required documentation for the re-accreditation in December 2015, in accordance with the Sub-Committee on Accreditation's procedures.

As of December 2014, there is 79 staff members in the institution (see table 1).

**Table 1 – Ombudsman staff**

| | Positions | Female | Male | University Degree | Secondary education (High school) |
|---|---|---|---|---|---|
| **Secretary General** | 1 | 1 | 0 | 1 | **0** |
| **Administrative Secretary to the Secretary General** | 1 | 1 | 0 | 0 | **1** |
| **Sector for Complaints** | 35 | 27 | 8 | 35 | **0** |

| | | | | | |
|---|---|---|---|---|---|
| Sector for advancement of human and minorities rights and liberties | 20 | 15 | 5 | 20 | 0 |
| General Affairs Sector | 14 | 8 | 6 | 4 | 10 |
| Cabinet | 8 | 6 | 2 | 3 | 5 |
| TOTAL: | 79 | 58 | 21 | 63 | 16 |

For the financial resources, i.e. budget and its execution, see the Execution of the Budget 2010-2014, see below.

**Table 2 - Execution of the Budget 2010-2014**

| Execution of the 2010 Budget | | | | |
|---|---|---|---|---|
| Ec. class. | Description | Allocated | Spent | % |
| 411 | Salaries, benefits, allowances | 77,174,000.00 | 70,351,649.96 | 91.16 |
| 412 | Social contributions | 13,623,000.00 | 12,411,403.54 | 91.11 |
| 414 | Social benefits to employees | 1,446,000.00 | 785,792.67 | 54.34 |
| 415 | Transportation allowance | 2,300,000.00 | 2,159,277.78 | 93.88 |
| 416 | Awards and bonuses | 1,000.00 | 0.00 | 0.00 |
| 421 | Fixed expenses | 4,400,000.00 | 4,365,439.72 | 99.21 |
| 422 | Travel expenses | 4,500,000.00 | 4,289,925.33 | 95.33 |
| 423 | Services on contract | 7,600,000.00 | 7,568,622.65 | 99.59 |
| 425 | Repairs and maintenance services | 700,000.00 | 467,432.47 | 66.78 |
| 426 | Material | 5,200,000.00 | 5,139,757.88 | 98.84 |
| 482 | Taxes, fees | 300,000.00 | 226,661.96 | 75.55 |
| 512 | Machinery and equipment | 4,400,000.00 | 4,397,565.40 | 99.94 |
| total | | 121,645,000.00 | 112,163,529.36 | 92.21 |
| **Execution of the 2011 Budget** | | | | |
| Ec. class. | Description | Allocated | Spent | % |
| 411 | Salaries, benefits, allowances | 86.444.000,00 | 75.079.864,04 | 86,85 |
| 412 | Social contributions | 15.322.000,00 | 13.322.889,45 | 86,95 |
| 414 | Social benefits to employees | 2.650.000,00 | 2.379.430,80 | 89,79 |
| 415 | Transportation allowance | 3.000.000,00 | 2.209.935,88 | 73,66 |
| 416 | Awards and bonuses | 387.000,00 | 385.757,21 | 99,68 |
| 421 | Fixed expenses | 8.350.000,00 | 8.057.384,43 | 96,49 |
| 422 | Travel expenses | 5.120.000,00 | 4.206.644,20 | 82,16 |
| 423 | Services on contract | 9.700.000,00 | 9.699.998,64 | 100,00 |
| 425 | Repairs and maintenance services | 1.100.000,00 | 1.000.607,58 | 90,96 |
| 426 | Material | 7.200.000,00 | 7.189.586,41 | 99,86 |

| | | | | |
|---|---|---|---|---|
| 482 | Taxes, compulsory fees, fines and penalties | 500.000,00 | 204.999,53 | 41,00 |
| 512 | Machinery and equipment | 9.939.000,00 | 9.938.886,13 | 100,00 |
| total | | 149.712.500,00 | 133.675.984,30 | 89,29 |
| **Execution of the 2012 Budget** | | | | |
| **Ec. class.** | **Description** | **Allocated** | **Spent** | **%** |
| 411 | Salaries, benefits, allowances | 92,783,000.00 | 88,94,691.46 | 95.86 |
| 412 | Social contributions | 16.373.000,00 | 15.569.577,97 | 95,09 |
| 414 | Social benefits to employees | 3,300,000.00 | 2,909,503.72 | 88.17 |
| 415 | Transportation allowance | 3,400,000.00 | 2,853,496.01 | 83.93 |
| 416 | Awards and bonuses | 60,000.00 | 47,759.73 | 79.60 |
| 421 | Fixed expenses | 9,880,000.00 | 8,806,134.28 | 89.13 |
| 422 | Travel expenses | 7,720,000.00 | 5,338,142.84 | 69.15 |
| 423 | Services on contract | 17,250,000.00 | 12,737,476.05 | 73.84 |
| 425 | Repairs and maintenance services | 800,000.00 | 736,251.79 | 92.03 |
| 426 | Material | 7,020,000.00 | 6,465,052.02 | 92.09 |
| 462 | Membership fees | 500,000.00 | 279,835.70 | 55.97 |
| 482 | Taxes, compulsory fees, fines and penalties | 200,000.00 | 210.00 | 0.11 |
| 512 | Machinery and equipment | 3,550,000.00 | 3,549,292.16 | 99.98 |
| total | | 162,836,000.00 | 148,237,423.73 | 91.03 |
| **Execution of the 2013 Budget** | | | | |
| **Ec. class.** | **Description** | **Allocated** | **Spent** | **%** |
| 411 | Salaries, benefits, allowances | 104,602,000.00 | 101,448,423.40 | 96.99 |
| 412 | Social contributions | 17,721,000.00 | 16,485,747.06 | 93.03 |
| 414 | Social benefits to employees | 5,750,000.00 | 4,332,230.28 | 75.34 |
| 415 | Transportation allowance | 3,450,000.00 | 3,316,671.42 | 96.14 |
| 416 | Awards and bonuses | 250,000.00 | 165,790.41 | 66.32 |
| 421 | Fixed expenses | 8,800,000.00 | 8,558,068.22 | 97.25 |
| 422 | Travel expenses | 4,000,000.00 | 3,653,827.47 | 91.35 |
| 423 | Services on contract | 9,300,000.00 | 8,981,137.24 | 96.57 |
| 425 | Repairs and maintenance services | 300,000.00 | 226,677.22 | 75.56 |
| 426 | Material | 6,501,000.00 | 6,367,419.54 | 97.95 |
| 462 | Membership fees | 1,000,000.00 | 666,974.91 | 66.70 |
| 482 | Taxes, compulsory fees, fines and penalties | 200,000.00 | 180,061.00 | 90.03 |
| 512 | Machinery and equipment | 1,950,000.00 | 1,880,893.80 | 96.46 |
| total | | 163,824,000.00 | 156,263,921.97 | 95.39 |
| **Execution of the 2014 Budget** | | | | |
| **Ec. class.** | **Description** | **Allocated** | **Spent** | **%** |
| 411 | Salaries, benefits, allowances | 120.589.000,00 | 110.814.579,90 | 91,89 |

| | | | | |
|---|---|---|---|---|
| 412 | Social contributions | 19.579.000,00 | 17.719.539,77 | 90,50 |
| 413 | Benefits in kind | 200.000,00 | 0 | 0 |
| 414 | Social benefits to employees | 7.313.000,00 | 4.167.602,35 | 56,99 |
| 415 | Transportation allowance | 3.549.000,00 | 3.400.347,28 | 95,81 |
| 421 | Fixed expenses | 6.000.000,00 | 4.983.229,14 | 83,05 |
| 422 | Travel expenses | 3.500.000,00 | 2.826.515,18 | 80,76 |
| 423 | Services on contract | 8.166.000,00 | 8.163.745,22 | 99,97 |
| 425 | Repairs and maintenance services | 470.000,00 | 364.694,06 | 77,59 |
| 426 | Material | 5.699.000,00 | 5.694.524,97 | 99,92 |
| 462 | Membership fees | 735.000,00 | 734.825,51 | 99,98 |
| 482 | Taxes, compulsory fees, fines and penalties | 300.000,00 | 127.614,00 | 42,54 |
| 512 | Machinery and equipment | 480.000,00 | 451.695,60 | 94,10 |
| total | | 176.580.000,00 | 159.448.912,98 | 90,30 |

While the budget in RSD has been nominally raised every year, when accounted for the inflation and EUR ratio, the situation is different (see table below).

**Table 3 – the percent of budget increase/decrease in EUR through the years**

| year | budget in RSD | budget in EUR | % |
|---|---|---|---|
| 2010 | 121.645.000,00 | 1.153.142,48 | -3,73% |
| 2011 | 149.712.500,00 | 1.475.726,96 | 27,97% |
| 2012 | 162.836.000,00 | 1.454.537,01 | -1,43% |
| 2013 | 163.824.000,00 | 1.425.652,41 | -1,99% |
| 2014 | 176.580.000,00 | 1.498.726,87 | 5,12% |

As per statistics for the period 2008-2012 on complaints and their outcome, it was given in the State Report (derived from the Protector of Citizens' Annual Reports).

***6.*** *Please provide updated information disaggregated by sex, age, and ethnicity or origin of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences imposed in cases of violence against women since the consideration of the State party's initial report. Please also provide information on the measures adopted, including legislative, to address concerns regarding the still substantial number of women in Serbia who are subject to violence, in particular domestic violence, as well as the insufficient measures and services to protect victims. Please describe the impact and effectiveness of these and other measures, including the National Strategy for Improving the Position of Women and Promotion of Gender Equality 2009-2015 and the Strategy for protection against domestic violence and other forms of gender-based violence (2008-2012) adopted by the Autonomous Province of Vojvodina. Please provide detailed information on specific training and sensitization programmes developed by the State party for law enforcement personnel concerning the treatment of women victims of violence.*

It is necessary to amend and improve the normative framework and practices of public authorities in line with the obligations assumed by the Republic of Serbia in ratifying the most important international treaties relating to the protection of women against violence.

Back in 2011 and then again in 2012, the Protector of Citizens put forward the initiative to amend the Criminal Code to the Ministry of Justice. This initiative, which provides for the introduction of the new offense of persecution, the tightening of sanctions, mandatory psychosocial treatment of

abusers and a number of other provisions aimed at the prevention of domestic violence and sexual abuse, into the system of criminal-law protection, has not been considered so far.

Having found the adoption of the General and Special Protocols for Conduct in Cases of Domestic and Intimate Partner Violence against Women extremely important, the Protector of Citizens has repeatedly pointed out the crucial role of implementation of the protocols in the daily work of competent authorities in developing a system to protect women against domestic and intimate partner violence. Therefore, in the period from March to October 2014, the Protector of Citizens, within his jurisdiction and in order to improve the work of public authorities, carried out an analysis of competent authorities involved in the system of protection of women against domestic and intimate partner violence (police, centers for social work, basic and higher public prosecutor's offices, basic, higher and appellate courts, magistrates' courts and health care institutions). The Protector of Citizens established numerous deficiencies in the implementation of the protocols and put forward a number of recommendations to the competent authorities. The recommendations and the analysis of the situation are presented in the Special Report of the Protector of Citizens on the Application of General and Special Protocols for the Protection of Women against Violence, which has been presented to the public and which will be posted on the website www.ombudsman.rodnaravnopravnost.rs.

Taking into account the experiences acquired in implementation of the applicable Law on Gender Equality, the normative framework and the need to harmonize our legislation with the provisions of the UN Convention on Elimination of All Forms of Discrimination against Women and other international instruments ratified, for the purpose of comprehensive protection and advancement of women's position, the Protector of Citizens has prepared and presented to the public the Model Law on Gender Equality, which contains a number of provisions aimed at the protection against gender-based violence.

***8.*** *Further to the State party's ratification of the Optional Protocol to the Convention on 26 September 2006, please inform the Committee of steps taken by the State party towards the setting-up or designation of a national mechanism which would conduct periodic visits to any place under its jurisdiction and control where persons are or may be deprived of their liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment.*

The Republic of Serbia signed the Optional Protocol on 25 September 2003. The Law on Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was adopted on 1 December 2005 ("Official Gazette of the Republic of Serbia and Montenegro-International Treaties", No. 16/2005), and, following the submission of the instrument of ratification on 26 September 2006, Serbia became a State Party to the Optional Protocol. The Republic of Serbia established the independent national preventive mechanism against torture (NPM) at the national level with a four-year delay, even though it was obliged to establish this mechanism at the latest one year after the entry into force of the present Protocol or of its ratification or accession.[1]

Under the Law amending the Law on Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment[2], adopted on 28 July 2011, the Protector of Citizens was designated as the authority performing the duties of the NPM in the Republic of Serbia in cooperation with the ombudsmen of autonomous provinces and associations whose Articles of Association stipulate the promotion and protection of human rights and freedoms as the goal of association.

The mandate of the Protector of Citizens, under the Law on the Protector of Citizens, shall include the competences and powers of the NPM provided for by the Optional Protocol, as well as visits to facilities where persons deprived of liberty are held, interviews with the said persons, access to

[1] Optional Protocol, Article 17.

[2] ''Official Gazette of the Republic of Serbia – International Treaties'' No. 7/11.

data, making recommendations to competent authorities and informing the public about the onset of torture and about the promotion of the position of persons deprived of liberty. The Protector of Citizens was accredited as the ''A'' status National Human Rights Institution in the United Nations system for the period 2010-2015, while the decision on re-accreditation is pending.

From February 2012, when the Protector of Citizens began to conduct visits in the capacity of the NPM, until the end of 2014, 224 facilities where persons deprived of liberty were held were visited, and 830 recommendations to remedy identified deficiencies were put forward to facilities and line ministries. Administrative authorities informed the Protector of Citizens regularly of actions taken with regard to the recommendations, as well as of the reasons why they were not able to implement certain recommendations. In accordance with the mandate of the NPM, after the authorities forwarded their replies with regard to the recommendations, meetings with the visited facilities and relevant ministries were held in order to discuss the current situation in the visited facilities, the system as a whole, and obstacles preventing it to comply with certain recommendations. In the period 2012 - 2014 dialogue with representatives of detention facilities of was established, which included 30 meetings - round tables within the police, and 2 meetings with the Ministry of Health and psychiatric institutions, as well as the dialogue with the Commissariat for Refugees and Migration, and the Directorate for the Enforcement of Criminal Sanctions. Reports with recommendations are regularly posted on the NPM website via which the public may be informed of the situation in certain areas, and of the situation of persons deprived of liberty.

The Protector of Citizens would like to express his concern over attempts to challenge his jurisdiction to act upon citizens' complaints in individual cases, and to exercise his mandate in situations when the actions of public officials can be characterized as criminal. Namely, at the sitting of the National Assembly's Security Services Control Committee held on 28 January 2015 on occasion of refusal of the Ministry of Defense and Military Security Agency to cooperate in a case involving the incident which had occurred during the 2014 Belgrade Pride, members of the largest parliamentary group and the representatives of executive authorities delivered a stand that data should not be forwarded to the Protector of Citizens, if criminal proceedings were instituted in relation to the said incident. This stand is contrary to the applicable legislation of the Republic of Serbia and the existing practice, because there are numerous cases in which the Protector of Citizens found that an act of torture was committed against persons deprived of liberty, and that the same fact was not established in criminal proceedings. In one case, the Constitutional Court of the Republic of Serbia, ruling upon a constitutional appeal, rendered a judgment and confirmed the findings of the Protector of Citizens that an act of torture was committed against the complainant. In this particular case, the Protector of Citizens and the Constitutional Court have acted independently of the authorities involved in criminal prosecution, and the investigation conducted in this case proved to be inefficient and ineffective. If the competent authorities based their future actions on the stands presented at the sitting of the National Assembly's Security Services Control Committee, it would be impossible for the Protector of Citizens to take action, both proactive and reactive. This would have far-reaching consequences since the existing criminal-law protection of victims of torture of the Republic of Serbia is neither efficient nor effective.[3]

***9.*** *Please clarify whether, and if so how, the new Law on Asylum, effective as from 1 April 2008, and its corresponding implementing regulations meet the concerns of the Committee expressed in its previous concluding observations (para. 9). Please provide updated information about the number of persons, broken down by country, that have been granted asylum or humanitarian protection and the number of persons returned, extradited and expelled since the entry into force of the new asylum law. Please provide details about the basis on which they were sent back, including a list of countries to which individuals were returned. Please provide detailed information on the type of appeal mechanisms that may exist, on whether any appeals were made and the outcomes of all appeals, if any.*

[3] See the answer to question 27.

The Law on Asylum and secondary legislation for the implementation of the Law are inadequate for the needs of acting upon a large number of applications filed by asylum seekers in Serbia, which number is increasing every year. Based on numerous visits to asylum centers, and police departments, and interviews with persons kept there, the Protector of Citizens has found that in most cases these persons are just passing through Serbia from their countries of origin to the European Union countries. Aliens who express their intent to seek asylum in the Republic of Serbia generally do not do it because they have a genuine intention to seek asylum in the Republic of Serbia, they rather use the benefits of the status of a person who has expressed an intention to seek asylum, since it provides access to accommodation, hygiene, meals, health care, communication via telephone and the Internet, and allows them to open to a bank account, as well as to organize and obtain technical support to continue their journey towards the European Union. On the other hand, public authorities of the Republic of Serbia have neither established effective state border control and security, nor the oversight over persons transiting through the Republic of Serbia (in 2014, 16,490 persons expressed an intention to seek asylum, and the total number of persons who were on their way from the country of origin to European Union countries is assumed to be twice as high). Persons who have expressed an intention to seek asylum are allowed full freedom of movement around the territory of the Republic of Serbia, and they usually stay for several days, during which period they are supposed to organize their crossing over Serbian state borders.

One of the problems encountered by the NPM is the issue of preventing illegal migrants who are serving a sentence issued in misdemeanor proceedings to contact their families in the country of origin via telephone. In addition, in some cases prison administration informs the embassy of the state of origin that its national is serving a sentence in their facility, without obtaining his/her prior consent, despite the fact that he/she comes from a country in a state of war. Exercise of the entitlement to notify the diplomatic – consular representative office must be left to the choice of the person concerned, as provided for by *CPT* standards.

According to available data, in the period from 2008 to 2014, 28285 persons expressed their intention to seek asylum, 12 subsidiary protections and 6 refugee statuses were granted (table 4).

**Table 4 – Number of asylum seekers with the number people who received subsidiary protection and refugee status**

| Year | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | Total |
|---|---|---|---|---|---|---|---|---|
| **Asylum seekers** | **77** | **275** | **522** | **3132** | **2723** | **5066** | **16490** | **28285** |
| **Subsidiary protection** | **0** | **4** | **1** | **0** | **0** | **2** | **5** | **12** |
| **Refugee status** | **0** | **0** | **0** | **0** | **3** | **2** | **1** | **6** |

These are only the aliens who were returned or expelled on the grounds of cancellation of residence. Most aliens are returned and expelled as a result of cancellation of residence and on the basis of international agreements on readmission. Against the ruling on cancellation of residence an appeal may be lodged with the Ministry of Interior of the Republic of Serbia.

An appeal may be lodged in the asylum procedure. Against the decision rendered by the Asylum Office in the first instance an appeal may be lodged with the Asylum Commission; and against the decision of the Asylum Commission an appeal may be lodged with the Administrative Court.

***13.*** *Please provide information on the number of reported cases of ill-treatment or physical abuse committed by law enforcement officials against asylum-seekers since the consideration of the State party's initial report and the penalties imposed on perpetrators of such acts. Please provide information on the situation of the*

*thousands of internally displaced persons living in collective centres and irregular settlements throughout the country.*[4]

During visits to asylum centers and police departments the NPM did not find any person, who is an asylum seeker, to have reported harassment or physical abuse by police officers or by asylum center staff. In addition, according to the authorized representative of the Commissariat for Refugees and Migrations there were no such reports.

According to the findings of the Protector of Citizens, the situation in asylum centers is relatively satisfactory; persons residing in them are generally satisfied with conditions of accommodation. There are five asylum centers which are located in Banja Koviljaca, Bogovadja, Sjenica, Tutin and Krnjaca. These five centers can accommodate from 656 to 686 asylum seekers (Banja Koviljaca 86, Bogovadja 160, Sjenica 150-180, Tutin 140 and Krnjaca 120).

In addition, to the Protector of Citizens' knowledge there are two illegal settlements of illegal migrants in Serbia. They are located in a forest near the Asylum Center in Bogovadja and the former brick factory in Subotica. Living conditions there are extremely poor and inadequate. There are indications that there are organized groups of people smugglers in Bogovadja, and Subotica is a town in the vicinity of the border with Hungary.

***18.*** *With reference to the previous concluding observations of the Committee (para. 14), please provide information on further educational programmes developed by the State party to ensure that all law enforcement officials are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted. Furthermore, please indicate whether the State party has developed a methodology to assess the effectiveness and impact of training/educational programmes on the reduction of cases of torture, violence and ill-treatment, and, if so, please provide information on the content and implementation of such methodology.*

Based on the performance of tasks within his mandate, pursuant to the Law on the Protector of Citizens, as well as on the activities taken in the capacity of the NPM, the Protector of Citizens concludes that in the Republic of Serbia sufficient steps towards systemic training on the provisions of the Convention, as well as other instruments and standards relating the prevention of torture, but also on the general provisions relating to human rights, have not been taken.

Training is not systemic. *Ad hoc* access to training in the field of human rights is focused exclusively on the negative approach in terms of elimination of the occurrence of human rights violations, or occurrences that may lead to or constitute torture, rather than incorporating the protection of human rights in a professional and ethical approach of the holders of power.

In order to remedy the deficiencies, the Protector of Citizens, particularly within the actions taken in the capacity of the NPM, organized a number of meetings with the representatives of the authorities in the past dialogue process. Protection of the rights of persons deprived of liberty and prevention of torture through the professional conduct of officers were discussed at these meetings.

In any case, the above mentioned is not, nor can it be an adequate substitute to systemic and organized training within the facilities themselves, which training should have already been introduced.

***19.*** *Please provide detailed information on training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect and document physical and psychological sequelae of torture. Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (the Istanbul Protocol)?*

[4] See report on the visit to Serbia and Montenegro of the Representative of the Secretary-General on the human rights of internally displaced persons, 2006 (E/CN/4/2006/71/Add.5, and report on the follow-up visit in 2009 (A/HRC/13/21/Add.1).

While visiting detention facilities in the capacity of the NPM, the Protector of Citizens has noted that employees of these facilities, particularly medical staff, lack proper training, i.e. they are not sufficiently familiar with the provisions of the Istanbul Protocol, and a large number of them has not even heard of this document. The same applies to the Malta Declaration on Hunger Strike, as well as with the other related instruments governing the conduct of medical and forensic personnel.

***20.*** *Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any new rules, instructions, methods and practices or arrangements for custody that may have been introduced since the consideration of the previous report in 2008. Please also indicate the frequency with which these are reviewed. Please describe further steps taken by the State party to ensure effective and independent supervision of detention facilities and inform the Committee of any rules that would prohibit investigations, visits by international bodies or mechanisms, or other forms of human rights scrutiny.*

In accordance with the recommendation of the Committee for the Prevention of Torture of the Council of Europe, the Ministry of Interior of the Republic of Serbia has compiled standard format information sheets on the rights of detained persons, which are handed to persons deprived of liberty and persons held in custody. During the visits conducted in the capacity of NPM it was observed that in certain police stations persons deprived of liberty under the Criminal Procedure Code were handed an information sheet which was not compliant with the new CPC. In addition, it also can also happen that the persons deprived of liberty are not handed information sheets on the rights of detained persons from the Instruction on the Rights of Arrested and Detained Person issued by the Ministry of Interior, i.e. that the said persons are informed of their rights only orally. In some police stations, allegedly for security reasons, persons deprived of liberty are not allowed to take the information sheets into the prison accommodation areas; immediately after they sign that they were served the information sheet, it is taken away. NPM has recommended remedying the observed deficiencies.

Another interesting fact is that upon examination of the official documentation during the visits the NPM has not come across a single appeal against the ruling on detention. In many cases it is questionable whether technical possibilities to compile an appeal were provided in the course of detention.

Internal oversight over the work of correctional facilities is conducted by the Directorate for the Enforcement of Criminal Sanctions (in particular the Department of Supervision), and external oversight is conducted by the Protector of Citizens and numerous civil society organizations. In addition, the parliamentary Commission for the Control of Enforcement of Criminal Sanctions has been established as well, however due to frequent changes of the members of the Commission, and other factors, it has not applied a systemic approach so far, and it has rather conducted only a few ad hoc visits.

On the basis of interviews with persons deprived of liberty held in detention units within the correctional facilities, as well as on the basis of official data and insight into the documentation, NPM has established that the judges of courts of jurisdiction usually do not conduct regular visits. In addition, in his previous visits the NPM has not established that a competent judge observed irregularities during his/her visit and reported the matter to the Ministry of Justice. The Protector of Citizens is not authorized to supervise the work of courts; however, he takes the stand that it is necessary to significantly increase the frequency of visiting of prisons, including detention units, particularly by the judges for enforcement of criminal sanctions.

***21.*** *Please provide updated information, including statistics, disaggregated by sex, age and ethnicity, on the number of pretrial detainees and convicted prisoners and the occupancy rate of all places of detention for the period 2008-2012. Please also provide information on the number of persons deprived of their liberty in psychiatric hospitals and other institutions for the mentally or physically disabled.*

A problem of numerous residential social care institutions is that they house, besides persons with intellectual disability, persons with mental disability. For example, the social care institution „Male pcelice" in Kragujevac has about 900 beneficiaries, and half of them are persons with mental disability.

Instead of reducing capacities of the existing residential social care institutions and psychiatric hospitals, and providing accommodation and care in the community, they are renovated. For example, the Centre for Children and Youth with Developmental Disabilities Veternik has 580 beneficiaries, even though the Law on Social Protection proposes the capacity of residential social care institutions up to 50 beneficiaries for children and up to 100 beneficiaries for adults. The Protector of Citizens recommended to provide accommodation to beneficiaries in the community and to harmonize the capacity of the institution in the next two years with legally prescribed number of beneficiaries. The Ministry of Labour, Employment, Veteran and Social Affairs failed to answer the recommendation made by the Protector of Citizens, and the Minister on several occasions addressed the public expressing his opposition to the recommendation and warning the citizens of Serbia that among those institutionalized persons there is an occurrence of cannibalism, and he uses it as an argument for not taking steps towards deinstitutionalization of institutions accommodating persons with intellectual disabilities. The Protector of Citizens is of the opinion that a reference to cannibalism among persons with intellectual disabilities is unnecessary disturbance of the public, which leads to increased stigmatization of these persons.

Overcrowded institutions lead to the situation that the existing insufficient number of staff is not able to provide necessary assistance to all beneficiaries to full extent, so in overcrowded situations they resort to physical restraint, and in residential social care institutions also to seclusion of agitated beneficiaries.

The Protector of Citizens recommended stopping with seclusion of persons with mental illness, particularly children in social care institutions. The reaction of state authorities, however, was to renovate existing dilapidated seclusion rooms, and to continue with seclusion.

District prisons are not overcrowded, but this problem is very pronounced in large Penal Correctional Institutions accommodating between 1000 and 2000 prisoners (Sremska Mitrovica, Pozarevac, Nis).

The Psychiatric Hospital "Dr Laza Lazarevic" reduced its capacity in terms of duration of treatment to a reasonable level, but still the problem is the number of patients placed in special psychiatric hospitals "Kovin" in Kovin and "Dr Slavoljub Bakalovic"in Vrsac. However, the impression is that patients with serious mental problems are transferred from "Dr Laza Lazarevic" to other hospitals.

**22.** *Please provide disaggregated statistical data regarding reported deaths in custody according to location of detention, sex, age, ethnicity of the deceased and cause of death since the consideration of the State party's initial report. Please give detailed information on the results of the investigations in respect of those deaths and measures implemented to prevent suicides and other sudden deaths in detention centres.*

The Protector of Citizens possesses following information related to total number of deaths in detention facilities, for the period from 1 January 2010 to 31 December 2014:

**Table 5 – number of reported deaths in psychiatric hospitals**

| Hospital | Total | Male | Female | Age: from 18 to 65 | 65 + |
|---|---|---|---|---|---|
| **Kovin** | 380 | 202 | 178 | 100 | 280 |
| **Laza Lazarevic** | 116 | 65 | 51 | 78 | 38 |
| **Vrsac** | 167 | 90 | 77 | 119 | 48 |
| **Sv. Vracevi** | 373 | 207 | 166 | 86 | 287 |

| | | | | | |
|---|---|---|---|---|---|
| **G. Toponica** | 69 | 41 | 28 | 48 | 21 |

**Table 6 –number of reported deaths in residential social care institutions for persons with intellectual and mental disabilities**

| Facility | Total | Male | Female | Age: until 14 | 14 to 18 | 18 to 65 | 65 + |
|---|---|---|---|---|---|---|---|
| **Male Pcelice** | 200 | 115 | 85 | / | / | 129 | 71 |
| **V. Ostroski** | 200 | 21 | 179 | / | / | 82 | 118 |
| **Kuline** | 54 | 30 | 24 | 5 | 11 | 34 | 4 |
| **Veternik** | 57 | 37 | 20 | 8 | 2 | 47 | / |
| **1. oktobar** | 185 | 110 | 75 | / | / | 132 | 53 |
| **N.Sumenkovic** | 71 | 42 | 29 | | 4 | 62 | 5 |
| **Otthon** | 70 | 43 | 27 | / | / | 45 | 25 |

**Table 7 – number of reproted deaths in asylum centers**

| Asylum center | Total | Male | Female | Age: 18-65 | 65 + |
|---|---|---|---|---|---|
| **Banja Koviljaca** | 1 | 1 | / | 1 | / |
| **Bogovadja** | 2 | 2 | / | 2 | / |
| **Sjenica** | 1 | 1 | / | 1 | / |

The Protector of Citizens will pay special attention to deaths in detention facilities in coming period. His activities will be presented in the Annual Report of the Protector of Citizens, and the National Preventive Mechanism as well.

**23.** *Please provide information about the frequency of inter-prisoner violence, including any cases involving possible negligence on the part of the law enforcement personnel, and the number of complaints made in this regards. What preventive measures have been taken?*

According to the data available to the NPM, which it collected during the visits to prisons for the period 2011-2013, the following cases of inter-prisoner violence were recorded:

2011 - District Prisons (DP) Kragujevac – 2 cases; Penal Correctional Institution (PCI) Sremska Mitrovica – 254 cases; DP Kraljevo - 8 cases; DP Negotin - 5 cases; DP Zajecar - 2 cases; DP Cacak - 2 cases.

2012 - PCI for women Pozarevac – 25 cases; Juvenile PCI in Valjevo – 28 cases; DP Pancevo - 10 cases.

2013 - PCI for women Sabac – 5 cases; DP Novi Sad - 70 cases; Reformatory for rehabilitation of juvenile offenders in Krusevac – 160 cases of violence.

A certain number of complaints addressed to the Protector of Citizens related to prisoner violence, and disciplinary procedures conducted for prisoner violence. Also, the NPM pays special attention to disciplinary offences during the visits by examining the institution's disciplinary proceedings, as well as security measures and video surveillance coverage.

For the purpose of prevention, the NPM made following recommendations: that prison physicians promptly inform the warden of the prison in case of indications that a prisoner has been treated violently; that in the case of the use of coercive measures, prison physicians complete their

reporting on the medical examination with missing, but required by law information, as follows: (1) statements of a person against whom the coercive measure was used with regard to circumstances of injury, i.e. anamnestic injury data and (2) the physician's opinion on the correlation between the measure used and the resulting injury; to undertake necessary measures to provide more extensive video surveillance coverage of the prison, and to ensure on-going monitoring and storing of recorded material for the minimum period of 30 days.

***24.*** *Please inform the Committee of the measures taken to protect and guarantee the rights of vulnerable persons deprived of liberty, notably Roma community members, women, persons suffering from mental illness and children.*

According to solutions of the existing system of execution of detention measures in the Republic of Serbia, it happens that female detainees, due to their relatively small number, spend detention measures practically in isolation. Although in the system of execution of criminal sanctions solitary confinement represents a disciplinary or special measure, which is strictly limited, it is for certain detainees a regular manner of execution of the detention measure, which highlights the negative aspect of the system for detention of women in Serbia.[5]

The Penal Correctional Institution for women in Pozarevac, which is classified as a semi-open institution according to the existing regulations, is in fact, an institution of closed type. Namely, all female convicts, even women serving their sentence for misdemeanour, regardless of treatment group, practically serve their sentence in the institution which is surrounded by high walls. In its report, NPM pointed out that the conditions in which female prisoners serve their sentences must comply with the relevant regulations and adjust to specific circumstances, also with regard to individual treatment programs for women who are serving sentences in this institution.

In addition, the fact that PCI for women in Pozarevac is the only prison for women in the Republic of Serbia, indicates that women, whose places of residence are in parts of Serbia far from this prison, are in more difficult position in the sense that they have difficulties in maintaining contact with their families and close persons, which was pointed out by the NPM in Annual Report.[6]

Remoteness from a place of residence, and harder maintaining contact with families also applies to juveniles, considering the fact that on the territory of Serbia there is only PCI for juveniles and only one Reformatory for rehabilitation of juveniles in Krusevac. Furthermore, their relatively large number (about 200) is not adequate to the need to have a far smaller number of juveniles in one institution, which would contribute that strong informal systems are not established, which is especially visible in Juvenile Penal Correctional Institution in Valjevo.

A particular problem represents the fact that, despite numerous recommendations made by the NPM, convicts with severe mental illness are accommodated within regular prison regime. Apart from the inability to provide adequate health care, it opens up a series of questions, such as security of these persons, security of other prisoners, as well as the question of training of the prison officers, including the existing medical staff in order to adequately act around such persons. It is necessary to make additional efforts in order to provide accommodation and assistance to the persons with mental illness, appropriate to their needs. The NPM sent a recommendation proposing that such persons should be placed in a special medical institution, the Special Prison Hospital, and possibly in residential health care unit within the prison, provided with the conditions for their treatment and care.[7]

During visits, the NPM did not observe any discrimination of the Roma national minority in detention facilities.

[5] NPM Annual Report for 2013, item 6.2.
[6] Ibid, item 6.3.
[7] Ibid, item 6.3.

**25.** *In the light of the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in the report on its visit to Serbia in November 2007 (CPT/Inf (2009) 1), please indicate measures taken to:*

*(a) Immediately remove any "non-standard issue objects" (i.e. baseball bats, iron rods, wooden sticks, thick metal cables, etc.) from all police premises where persons may be held or questioned;*

The NPM during its visits noted prohibited items (rods, sticks, shovels, etc.) in some police stations in offices or rooms used for police interviews. Also, some police stations do not have a separate storage place for items confiscated as material evidence during the course of criminal investigation. Even though they are properly labelled, it happens that such items are present in the said rooms, used for interviews.

*(b) Reduce the occupancy levels in prison cells, especially in sections for remand prisoners;*

The Government of the Republic of Serbia adopted the Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions in the 2010-2015 period. Some progress can be seen within the framework of the Strategy, but it is necessary to pay special attention to improving accommodation capacities of large penal correctional institutions and their unburdening.

Judiciary reforms that have so far taken place in the Republic of Serbia did not lead to more efficient performance of duties within the courts in relation to the detention matters. In addition, it seems that the detention measures are often easily pronounced, with inappropriately prolonged period of time, and that courts rarely define measures such as guarantees, which are effective alternatives to detention. Circumstances around the enforcement of the measures of detention, violation of the presumption of innocence of detainees, as well as requirements for the enforcement of these measures, in many cases, represent a kind of punishment prior to conviction.[8] However, the efforts aimed at improving capacities for accommodation of detainees are encouraging. Partial reconstruction of the detention unit of DP Belgrade was carried out, and after visits conducted and sent recommendations by NPM, a part of the detention unit of the Juvenile Penal Correctional Institution in Valjevo and DP Negotin were reconstructed, in which way the material conditions of accommodation met applicable regulations and standards.

*(d) Review the legal safeguards of persons in specialized institutions subjected to involuntary hospitalization;*

The Law[9] prescribes detention without consent and placement without consent (involuntary hospitalization) of a person with mental disability in a psychiatric institution. The person for whom a medical doctor or psychiatrist estimates that, due to mental disabilities, seriously and directly endangers his/her own life or health and safety, or life or health and safety of another person may be involuntary institutionalized (without consent).

Particular attention should be paid to time limits prescribed by law which relate to retention or accommodation without consent in a psychiatric institution. Specifically, unlike the detained person by the police or prosecutor who must be brought before the court no later than 48 hours, a person with mental disabilities whom by example a psychiatrist retained before the weekend will meet a judge after seven days.

*(e) Adopt a clear policy for the use of means of restraint in health-care facilities;*

The NPM pointed out the shortcomings noted in the work of psychiatric hospitals in terms of restraining disturbed/violent patients, as well as in the records maintained on this matter. In order to eliminate the aforementioned irregularities and the absence of clear procedures, a new Rulebook on the detailed conditions for applying physical restraint and seclusion on persons with mental

[8] Ibid, item 6.2.

[9] Law on the Protection of Persons with Mental Dissabilities ("Official Gazette of the RS", no. 45/13), section VI.

disabilities who are being treated in psychiatric institutions[10] was adopted. The Protector of Citizens is of the opinion that the Law and this Rulebook should be amended, by removing the provisions related to the seclusion of persons with mental disabilities who are treated in psychiatric institutions.[11]

**27.** *With reference to the Committee's previous observations (para. 23), please provide detailed statistical data, disaggregated by crime committed, age, sex and ethnicity, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on related investigations, disciplinary and criminal proceedings, convictions and on the penal or disciplinary sanctions applied.*

According to the data provided to the Protector of Citizens by courts for the period from 2010 to 31 December 2014 inclusive, out of the total number of conducted court procedures for criminal acts Extortion of confession and Ill-treatment and torture committed by persons acting in the discharge of his official capacity in about 15% of the cases final condemnatory judgment was passed. The most usual judgements are one to two years probation.

**29.** *Please provide information on the outcome of the investigations and any disciplinary/criminal proceedings related to:*

*(d) The alleged physical ill-treatment and sexual abuse of drug addicts in Crna Reka, a rehabilitation centre affiliated to the Serbian Orthodox Church;*

The Protector of Citizens filed a criminal complaint against the priest, for whom there were grounds for suspicion that he abused persons accommodated in this institution. Thereafter, the said priest was charged with the murder of one person who was in the drug addiction treatment program. As far as the Protector of Citizens knows, this case was properly investigated and the priest was sentenced to imprisonment.

*(e) The reports of torture or cruel, inhuman or degrading treatment or punishment of persons with disability in social-protection institutions.*

The Protector of Citizens, in performing his duties of the NPM, visited Centre for Children and Youth with Developmental Disabilities Veternik, which accommodates persons with disabilities and children with developmental disabilities. The Centre and the competent authorities (Ministry of Labour, Employment, Veteran and Social Affairs and Provincial secretariat for health, social policy and demography) were sent a Report of noted irregularities during the visit, which also contained recommendations for improving the position of beneficiaries in the Centre. The general assessment is that beneficiaries' rights are violated. In 2013, during the visit of NPM, there were 565 occupants in the Centre, of which 96 children, and the institution employs only 30 defectologists, 2 psychologists, 5 doctors, 43 nurses and 89 caregivers. The institution does not have a full-time employed neuropsychiatrist, but he is hired based on service contract and only periodically comes to the institution. In addition to inappropriately large number of beneficiaries being placed in the institution and that the number and structure of the staff are not adequate to number of beneficiaries, the problem is also that this institution accommodates both children and adults.

For the above reasons, the Protector of Citizens, in performing the duties of the National Preventive Mechanism, delivered recommendations to the competent authorities to undertake all necessary measures and activities with the aim of reducing the current number of beneficiaries in the Veternik Center, that is, according to national legislation, up to 50 children and 100 adults, and to provide all beneficiaries who are displaced from the Centre adequate assistance and protection in the community, as well as their integration in the community.

The biggest problem of beneficiaries of this institution is that they are forgotten by the society and that this institution is practically the asylum for people. A large number of beneficiaries in this institution are housed for a very long period, 248 beneficiaries have been housed here for more

[10] Official Gazette of the RS, no. 94/2013.

[11] Official Gazette of the RS, no. 94/2013.

than 15 years, and some stay there for lifetime. A number of beneficiaries almost never lived in the community, but only moved from an institution to an institution. Beneficiaries with severe disabilities are completely isolated, and this institution can provide them only satisfaction of basic needs, such as accommodation and food. There are beneficiaries who have severe mental disabilities and who should be referred for treatment in a psychiatric hospital. With regard to this problem, the Centre addressed to the competent authorities, but there were no positive responses and these persons are still in the Centre. Their situation is particularly difficult because the employees of the Centre often do not know how to treat them, and it happens that they even physically restrain them, tie and place in a special room for seclusion, which is like a prison cell. What is an additional problem in this situation is that the institution does not employ a full-time psychiatrist, but a psychiatrist only occasionally comes to the institution, so there is not enough time to devote to all beneficiaries who need him. A number of beneficiaries, who are immobile, is in a particularly difficult position, because they are tied to the bed and rarely go out into the fresh air, and they are poorly involved in any activity, except for physical therapy.

The main obstacle in solving the position of the beneficiaries in the Centre is that the community is not provided with conditions for the stay of these people, nor their families and carers are supported in providing adequate care for these persons. As the authorities do not adequately perform their function and since they have not made adequate living conditions for these persons in the community, families are left with no option but to place their relatives with disabilities into the Centre. Also, an additional problem is the lack of sufficient cooperation and coordination between multiple competent services, such as the Ministry of Labor, Employment, Veteran and Social Affairs, Provincial Secretariat for Health, Social Policy and Demography, social care centres and local governments.

What is particularly worrying is the fact that there is a large number of children placed in the Centre (at the time of the visit there were 96). The state should take particularly active role here and make efforts so children with developmental disabilities are taken care outside the institution, in the natural environment, and it would be best in their families. In this sense, it is necessary to provide help and support to their families. Currently the situation is not in accordance with Recommendation (2005) 5 of the Committee of Ministers to member states of the Council of Europe on the rights of children living in institutions, stating that the placement of a child should remain the exception and have as the primary objective the best interests of the child and his or her quick and successful integration or reintegration as soon as possible, as well as the placement of a child in an institution should not be longer than necessary.

***30.*** *Please provide information on the reforms undertaken to improve the internal complaints system for prisoners. Please also provide information on the steps taken to establish an independent complaints mechanism available to persons deprived of their liberty.*

Article 126 of the Law on Execution of Criminal Sanctions, adopted in 2014, stipulates that a convicted person may, in exercising his rights, file a submission to a department head or other authorized person in the respective service of the institution, who is required to provide a written and substantiated response to the submission within five days of its delivery. Furthermore, the convicted person is entitled to file a complaint to the warden of the institution in connection with violation of his/her rights or other irregularities affecting him in the institutions within three months from violation of the rights or other irregularity, and in extreme circumstances within six months due to an objective reason. The warden of the institution or person duly authorised by the warden shall consider the convicted person's complaint and issue a ruling within 15 days. The convicted persons who fail to receive a response to his complaint or is not satisfied with the ruling is entitled to file an appeal with the director of the Administration for Enforcement of Criminal Sanctions within eight days from the day of receipt of the ruling. The director of the Administration shall rule on the appeal within 30 days from the date of its receipt. Article 127 of the same Law stipulates that if a convicted person believes that his right has been violated by an action of the warden of the institution, he is entitled to file a complaint to the director of the

Administration. Article 128 of the same Law stipulates that a convicted person is entitled to make complaints to authorised person conducting supervision of the operation of the institution without the presence of institution staff.

The new Law on the Enforcement of Criminal Sanctions introduces a judge for the enforcement of criminal sanctions (enforcement judge). The enforcement judge protects the rights of detainees, convicts, persons whom have been passed the security measure of compulsory psychiatric treatment and confinement in a medical institution, compulsory treatment of drug addicts or alcoholics when the treatment is carried out in an institution, supervises the legality in enforcing criminal sanctions and ensures equality of these persons before the law. The enforcement judge also makes decisions on the protection of the rights upon a complaint of a detainee and a petition for judicial protection of convicts, persons whom have been passed the security measure of compulsory psychiatric treatment and confinement in a medical institution, compulsory treatment of drug addicts or alcoholics when the treatment is carried out in an institution, protects the rights of convicts by deciding on an appeal against the decision of the prison warden or director of the Administration, in the cases stipulated by this law and other cases stipulated by law. For the protection of rights of the convict in the course of serving the sentence of imprisonment, the competent court is a higher court based on the seat of the institution where the convict is imprisoned, and for the protection of rights of the detainee during the detention measure, the competent court if a higher court based on the seat of the institution where the measure is enforced.

Article 37 of the Law on the Enforcement of Criminal Sanctions stipulates that a detainee is entitled to file a complaint orally on the record or in writing to the enforcement judge if he/she considers that any of his rights has been violated during the execution of detention measure in the institution. The convicted person is entitled to petition for judicial protection against any decision of the director of the Administration, within three days from the delivery of the decision, if he/she considers that that any of his rights has been illegally restricted or violated, provided that, prior to submitting a petition for judicial protection, the convicted person is obliged to address the authorities in the proceedings prescribed by Articles 126 and 127 for the protection of his/her rights of this Law. Exceptionally, the convicted person may file a petition for judicial protection directly to the enforcement judge when his/her right to life or physical integrity is seriously threatened. Convicted person or detainee is entitled to file a complaint to the enforcement judge within three months from the date of the violation of rights, and exceptionally within six months due to an objective reason.

The Law on the Protector of Citizens prescribes that any physical person who considers that his/her rights have been violated by an act, action or failure to act of an administrative authority may file a complaint with the Protector of Citizens, that prior to filing a complaint, a complainant is obliged to endeavour to protect his/her rights in appropriate proceedings, but that the Protector of Citizens may initiate proceedings even before all legal remedies have been exhausted if the complainant would sustain irreparable damage or if the complaint is related to violation of good governance principle, particularly incorrect attitude of administrative authority towards the complainant, untimely acting or other violations of rules of ethical behaviour of administrative authority employees. If the Protector of Citizens establishes that irregularities existed in the work of the administrative authority, he shall deliver a recommendation to the authority on steps to be undertaken in order to rectify the noted irregularity, and the administrative authority is obliged to inform the Protector of Citizens within 60 days at latest from the day it received the recommendation whether it acted upon the recommendation and eliminated the irregularity, or about reasons why it failed to act upon the recommendation. If the administrative authority fails to act upon the recommendation, the Protector of Citizens may inform the public, the National Assembly and the Government, and may recommend proceedings to determine the accountability of the official in charge of the administrative authority.

***31.*** *Please provide information on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to victims of torture, or their families, since the examination of*

*the initial report in 2008. This information should include the number of requests made, the number granted, and the amounts ordered and those actually provided in each case.*[12]

The data available with the relevant authorities in the Republic of Serbia, which relates to non-pecuniary compensation to victims of torture, are not entirely clear because:

- It is not defined whether the stated amounts of compensation paid include compensation paid to victims of torture, as defined in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or these are amounts paid to victims of torture defined in a broader sense, as defined in the criminal legislation of the Republic of Serbia (see the answer to question 1).

- It is unclear where the data on non-pecuniary compensation paid to victims of torture also includes non-pecuniary compensation paid to victims of criminal act - Extortion of confession from Article 136 of the Criminal Code, and whose execution is also an act of torture within the meaning of Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the data includes only amounts of non-pecuniary compensation paid to victims of criminal act - Ill-treatment and torture as referred to in Article 137 of the Criminal Code.

***32.*** *Please clarify whether the right to compensation depends on the existence of a judgement in criminal proceedings ordering compensation. Please indicate how many victims have been compensated despite the perpetrator not being identified. Do investigations into such cases continue until the perpetrator(s) is/are identified and brought to justice? Can compensation be obtained by a victim of torture or cruel, inhuman or degrading treatment if the perpetrator has been subjected to a disciplinary, but not a penal, sanction?*

The right to compensation may be exercised in special civil proceedings, which is not necessarily linked to the completion of the criminal proceedings. The Protector of Citizens has no data on how many victims have exercised their right to compensation despite the perpetrator not being identified.

***33.*** *In the light of the Committee's previous concluding observations (para. 18), please provide information on any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes.*

The Republic of Serbia has no organized special programs for victims of torture. Programs of psychosocial, medical and legal assistance are available to victims of torture and their families through non-governmental organisations, such as IAN – International Aid Network.

***36.*** *Please indicate the measures taken to ensure that corporal punishment of children is explicitly prohibited in all settings. Please provide information about the penal sanctions in place for corporal punishment and on the implementation of the National Strategy for the Protection of Children from Violence, adopted in December 2008.*

In 2012 and 2013, the Protector of Citizens, in cooperation with UNICEF, organized a wide campaign against corporal punishment of children and promotion of good parenting practices. The Panel of Young Advisors of the Protector of Citizens conducted a peer survey of attitudes of children and youth towards corporal punishment, and the results were presented to the public. The Protector of Citizens held a number of seminars on the harmful effects of corporal punishment to health professionals and teachers, a brochure "Parenting without corporal punishment" was made, which has been shared in health institutions and schools, and members of the Panel of Young Advisors organized debates in ten cities, at which they discussed the corporal punishment with adults, children and youth.

The Protector of Citizens also publicly presented his Position on corporal punishment of children.[13]

[12] CAT/C/SRB/CO/1, para. 18.

[13] Available in English at: http://www.ombudsman.pravadeteta.com/attachments/394_Position%20Paper.PDF

Deputy Protector of Citizens spoke at various platforms on the harmful effects of corporal punishment, the importance of legal ban and raising awareness and consciousness of parents about the effectiveness of nonviolent methods.

***37.*** *Please provide information as to whether the use of restrictions on people with disabilities in institutions is registered and recorded. If it is, please provide information on the number of persons who have been subjected to restrictions, disaggregated by location, age, gender, and reason for the restriction being imposed. Please also clarify whether the government has conducted an investigation into the use of restraints on individuals with disabilities in institutions. If it has, please provide the results of that investigation.*

Unlike the persons who are in police detention, pretrial/trial detention and prisons, and psychiatric-institutions, persons with intellectual and mental disabilities housed in residential social care institutions are detained and restricted without any legal grounds.

As a justification for depriving and restricting the freedom of movement of persons with mental and intellectual disabilities, it is stated the circumstance that those are persons who do not have the capacity to act and express their will or it is claimed that it is in their best interest. This is not grounded in the Law and it largely depends on the willingness of employees. Also, unlike the application of means of restraint in psychiatric hospitals, which are determined by law, in social care institutions there is no legal ground for restraining persons with mental and intellectual disabilities, and employees justify such acting as being in the best interests of those persons. The situation is similar with the use of measure of seclusion of persons with mental and intellectual disabilities in residential social care institutions, which is forbidden according to the applicable standards, especially with regard to children.

The use of restraint and seclusion of persons in these institutions (social care institutions) is not the consequence of bad intention of staff, but largely due to insufficient number and qualifications of staff that by restraint and seclusion create space for attention to other persons. Also, numerous shortcomings were noted in terms of registration and recording of cases of restraint and seclusion.

The Protector of Citizens pointed out in a number of reports on shortcomings in terms of restraint, as well as the inadmissibility of seclusion, especially children. The competent authorities were issued recommendations for the remediation and establishment of a legal framework that would guarantee the legal status of persons in these institutions (social care institutions), particularly with regard to restriction on freedom of movement, restraint and seclusion. The Ministry of Labour, Employment, Veteran and Social Affairs, Veterans did not show a satisfactory level of cooperation with the Protector of Citizens, nor took the necessary measures to remedy the shortcomings addressed in the made recommendations.

***40.*** *Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and in practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention. Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.*

The Protector of Citizens challenged the constitutionality of several laws before the Constitutional Court, because they contain provisions allowing for special measures to be taken in breach of the confidentiality of letters and other means of communication without a court order.

The Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection successfully challenged the constitutionality of the provisions of the Law on Military Security Agency and Military Intelligence Agency before the Constitutional Court. The provisions were in collision with the constitutional guarantee that any derogation from the privacy of correspondence and other means of communication must be approved by a court. Following the Decision of the Constitutional Court, the National Assembly amended the Law.

In addition to the provisions of the Law on MSA and MIA, in 2013 the Constitutional Court also repealed as unconstitutional specific provisions of two other Laws. The first one is the provision of the Law on Security Information Agency which provides for a derogation from privacy of letters and other communication. The provision was not worded clearly and precisely enough, which prevents the citizens and other legal subjects from understanding which legal rule applies in their specific circumstances, thus denying them the possibility to protect from arbitrary violation of their right to inviolability of private life and communication.

Further, acting on a Motion filed by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection in 2010, the Constitutional Court also repealed as unconstitutional two provisions of the Law on Electronic Communications, which allowed the use of special measures derogating from the inviolability of letters and other communication not only under a court order, but even without it, whenever such possibility was provided for by the law and/or whenever a competent authority so required.

Finally, in 2013, the Protector of Citizens and the Commissioner filed the Constitutional Court a Motion for a Constitutional Review of the provision of the Criminal Procedure Code, which stipulates that the police, acting on the order of a public prosecutor, may obtain records of phone communications and base stations used or identify the caller's location. A decision of the Constitutional Court in this case is still pending, but it is expected that the Court will reiterate the stand it has already taken earlier on the similar provisions of the other laws.

***41.*** *Please provide detailed information on the relevant new developments in the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the initial report, including any relevant jurisprudential decisions. In particular, please provide information on the content and relevant changes introduced by the new Criminal Procedure Code, adopted in 2006 and expected to enter into force on 31 December 2010.*

In the last several years, two judicial reforms started in the Republic of Serbia and both of them failed, according to generally accepted opinion of the professional public.

Welcoming the efforts to improve the existing situation in the field of criminal legislation, the Protector of Citizens expresses his concern that problems in this field can be solved with too frequent amendments to regulations, often made without public hearings.

In 2011 in an attempt to establish more efficient system of detecting and proving criminal acts in the Republic of Serbia, a new Criminal Procedure Code was adopted, amended five times within three years, which introduced the so-called prosecutorial investigation. In the last ten years substantive criminal law in the Republic of Serbia was also subject to too many amendments, and in the National Assembly on several occasions the idea has arisen of introducing chemical castration, as a criminal sanction for certain criminal acts.

What is particularly worrying is the fact that in the Republic of Serbia from September 2014 to February 2015 lawyers suspended their work and during this period they did not appear for trials, not even for detention cases, which resulted in the violation of the rights of the accused to counsel, and in particular had negative consequences for people who were in detention. (end)