



**REPUBLIC OF SERBIA**  
**PROTECTOR OF CITIZENS**  
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Belgrade



Заштитник грађана  
Zaštitnik građana



**BEOGRADSKI CENTAR**  
**ZA LJUDSKA PRAVA**

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## **NATIONAL PREVENTIVE MECHANISM**

**MONITORING OF THE TREATMENT OF MIGRANTS/ASYLUM SEEKERS AND  
IMPLEMENTATION OF NPM RECOMMENDATIONS**

# **Report on the Visit to the Shelter for Foreigners in Padinska Skela**

Belgrade, June 2016

## **MANDATE OF THE NATIONAL PREVENTIVE MECHANISM**

Under the Act Ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Degrading or Humiliating Treatment or Punishment<sup>1</sup>, the National Preventive Mechanism for the Prevention of Torture (NPM) shall visit institutions where persons are or may be deprived of their liberty with a view to deterring any form of torture or other form of ill-treatment by state authorities or public officials and to providing guidance to state authorities on putting in place accommodation and other living conditions in institutions where persons are deprived of liberty in accordance with the valid regulations and standards.

The NPM is entitled to unimpeded and unannounced access to all institutions where persons are or may be deprived of liberty at all times; to hold private interviews with such persons, with public officials, who are under the obligation to cooperate with it, and with any other persons who may have information of relevance to the treatment of persons deprived of liberty; to access all documentation regarding those persons; to issue recommendations to the competent authorities with a view to improving the treatment of persons deprived of liberty and the conditions in which they are held or detained.

Under Article 2a of the Act, the Protector of Citizens shall perform NPM duties and, in performing these duties, cooperate with the Ombudspersons of the autonomous provinces and with associations, the Statutes of which include the goal of improving human rights and freedoms in accordance with the law.

The Protector of Citizens has formed an organisational unit, the “National Preventive Mechanism Secretariat”, which performs NPM professional duties, pursuant to the NPM’s remit defined in Article 4 of the Optional Protocol to the Convention against Torture. The Secretariat is managed by the NPM Secretary, who operates in accordance with the guidelines issued by the Deputy Protector of Citizens charged with the rights of persons deprived of liberty.

The Protector of Citizens and the AP of Vojvodina Provincial Ombudsperson have signed a Memorandum on Cooperation in Performing NPM Duties<sup>2</sup>, under which the Provincial Ombudsperson shall actively partake in the visits by NPM Monitoring Team to institutions in the territory of the AP of Vojvodina where persons are deprived of liberty.

Pursuant to the procedure implemented after the publication of the Public Call<sup>3</sup>, the Protector of Citizens selected the following associations with which it will cooperate in performing NPM duties: the Belgrade Centre for Human Rights (BCHR), the Victimology Society of Serbia, Group 484, the Mental Disability Rights Initiative - Serbia (MDRI-S), the Committee of Human Rights Lawyers (YUCOM), the International Aid Network (IAN), the Human Rights Committee – Valjevo, the Helsinki Committee for Human Rights in Serbia and the Human Rights Centre – Niš.

After its visits, the NPM prepares reports, which it forwards to the visited institutions. Thereinafter, the NPM maintains continuous dialogue with the visited institutions and the authorities within which they operate, with a view to eliminating the identified deficiencies that may lead to torture or inhuman or humiliating treatment.

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1 Official Journal of Serbia and Montenegro – International Treaties Nos. 16/2005 and 2/2006 and Official Gazette of RS - International Treaties No. 7/2011.

2 Signed on 12 December 2011.

3 Published in the Official Gazette of the Republic of Serbia on 29 January 2016.

## MAIN INFORMATION ABOUT THE VISIT

VISITED INSTITUTION	Shelter for Foreigners in Padinska Skela
PURPOSE OF THE VISIT	Monitoring of treatment of migrants/asylum seekers and implementation of NPM recommendations issued in 2015
VISIT CONDUCTED BY	Protector of Citizens in cooperation with the Belgrade Centre for Human Rights
VISIT ANNOUNCED	21 June 2016
DATE OF THE VISIT	The visit was not announced in advance
VISIT TEAM	<p><b>Team Leader:</b>  Jelena Unijat,  <i>Professional Service of the Protector of Citizens/NPM</i></p> <p><b>Team Members:</b>  Jelena Jelić,  <i>Professional Service of the Protector of Citizens/NPM</i>  Borjana Peruničić,  <i>Professional Service of the Protector of Citizens/Gender Equality Department</i>  Marko Anojčić,  <i>Professional Service of the Protector of Citizens/NPM</i>  Marko Štambuk,  <i>Belgrade Centre for Human Rights</i>  Raduan Mansouri,  <i>Arabic interpreter</i>  Mokhtar Shehkoui  <i>Farsi interpreter</i></p>

## COOPERATION OF OFFICIALS WITH THE NPM TEAM

All police officers in the Shelter for Foreigners fully cooperated with the NPM Team, providing it with all the information it required and free access to the documentation on request.

## **COURSE OF THE VISIT**

### **STAGE I: MEETING WITH SHELTER FOR FOREIGNERS REPRESENTATIVES**

The National Preventive Mechanism (NPM) Team started its visit by meeting with the Shelter Manager, the Head of the Sector for the Reception and Accommodation of Foreigners within the Border Police Directorate Foreigners Department and the Shelter staff. It familiarised them with the NPM's mandate, general goals of the visit, principles of work and the plan of the visit to the Shelter and asked them about the treatment of foreigners in the Shelter. NPM's interlocutors provided a general overview of the work of the Shelter and the main problems they faced and responded to the Team's questions.

### **STAGE II: TOUR OF THE FACILITIES IN WHICH THE FOREIGNERS ARE ACCOMMODATED**

During its visit, the NPM Team also toured the facilities in which the foreigners are accommodated.

### **STAGE III: PERUSAL OF DOCUMENTS**

The NPM Team perused the records on foreigners accommodated in the Shelter and reports on use of means of coercion.

### **STAGE IV: INTERVIEWS WITH FOREIGNERS ACCOMMODATED IN THE SHELTER**

During its visit, the NPM Team interviewed three foreign nationals (nationals of Bosnia and Herzegovina, the Kingdom of Morocco and the People's Democratic Republic of Algeria) residing in the Shelter at the time of the visit.

### **STAGE V: INTERVIEW WITH THE DOCTOR OF THE BELGRADE CORRECTIONAL FACILITY IN PADINSKA SKELA**

The NPM Team also met with the doctor of the Belgrade Correctional Facility in Padinska Skela charged also with extending health care to the residents of the Shelter for Foreigners.

## 1. Introduction

The NPM had previously paid two visits to the Shelter for Foreigners (on 31 October 2014 and on 13 August 2015) and issued its reports on these visits (Ref. No. 71-84/14 of 2 December 2014 and Ref. No. 71-73/15 of 19 August 2015). During this visit, the NPM ascertained that the Shelter partly acted on the four recommendations on improving the treatment of foreigners it issued to the Shelter in its report on the 2015 visit.

## 2. Shelter for Foreigners Admission and Release Procedures

Perusal of the "Register of Foreigners Accommodated in the Shelter" showed that 174 foreigners had been accommodated in the Shelter from 1 January to 21 June 2016. Ten of them were women and ten were minors. All minors were accommodated with their parents, i.e. none of the minors were unaccompanied. Most of the women were accommodated with their families, but several women were travelling on their own as well. Most of the foreigners referred to the Shelter were nationals of Syria, Afghanistan, Pakistan and Algeria. They stayed in the Shelter three weeks on average; longest stay lasted two months.

The foreigners are referred to the Shelter pursuant to rulings issued by the regional police directorates pending their forced removal. The directorates refer to the Shelter the foreigners apprehended by the police, who cannot be forcibly removed immediately. Before they issue a ruling referring a foreigner to the Shelter, the Police Directorates seek written consent to the referral from the Manager of the Shelter or the Head of the Border Police Directorate Foreigners Department.<sup>4</sup>

Foreigners lacking travel documents or any other identification documents are referred to the Shelter as well. The NPM Team perused the cases and ascertained that the foreigners were also referred to the Shelter under on these grounds (pursuant to Article 49(1) of the Act on Foreigners<sup>5</sup>), to ensure their presence and testimony in criminal proceedings against defendants charged with the crimes of illegal crossing of the state border and human smuggling, given that most of these foreigners were victims of these crimes. The rulings referring the foreigners to the Shelter are issued by the competent police directorates after consultations with the public prosecutors. These foreigners stayed in the Shelter very short periods of time, only three or four days, until they were taken over by the public prosecutor.

The Shelter also takes in foreigners, against whom, in addition to a criminal or misdemeanour penalty, a final court decision ordering their deportation has been issued. The foreigners stay in the Shelter pending their deportation.

The police bringing a foreigner to the Shelter submit a written order on the foreigner's admission issued by the head of the relevant police directorate. The order specifies the main personal data of the foreigner, whether s/he was fingerprinted and searched and needs to be isolated. The orders NPM perused specified that the foreigners need not be isolated or left that box empty (the template includes lines where the text is to be written or options to be ticked). According to the Shelter Manager, the order template is an old one, still filled by individual police directorates; even if the "to be isolated" box were ticked, the Shelter would not act on that part of the order.

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<sup>4</sup> According to the Shelter Manager, such consent is sought to assess whether the foreigner may be removed on the basis of evidence found on his/her person (readmission procedure) and to establish whether there is room in the Foreigners Shelter.

<sup>5</sup> Official Gazette of the Republic of Serbia, No. 97/08.

The officers fill in a form on the admission and search of the foreigner, in which they specify the personal data of the foreigner; the data of the police officer who brought him or her in; a statement on whether s/he has any physical injuries or signs of an illness; a description of any injuries; the foreigner's statement on his/her preferences; the proposed measures; and the items found on the foreigner during search. Observations may be entered in a box at the bottom of the form. The form is signed by the present police officers. Another form on the release of the foreigner (albeit only in Serbian) is filled before s/he leaves the Shelter for Foreigners and is signed both by the present police officers and the foreigner.

The cell phones, money and items assessed as security risks (sharp objects, blades, et al) are seized from the foreigners on admission. A receipt on temporarily seized items is drawn up and signed also by the foreigner from whom they were seized. The form of the receipt is also available only in Serbian, regardless of the foreigner's knowledge of the language. The seized items are returned to the foreigner upon release, i.e. the launch of the forced removal procedure, and this fact is specified in the release form. The foreigners are fingerprinted and photographed in the Shelter. They are allowed to make one phone call at the expense of the Ministry of Internal Affairs on admission.

Foreigners, who do not understand Serbian, are provided with a factsheet on their rights in English, drawn up in accordance with the criminal procedure rules. The factsheet includes information on the rights of arrested persons and persons deprived of liberty without a court decision, which does not fully familiarise foreigners referred to the Shelter with the situation they are in and the rights they have and which may even lead them to get a wrong picture of their status.<sup>6</sup> Specific rights of arrested persons are justifiably not listed.<sup>7</sup>

Foreigners are not referred to the Shelter i.e. held or arrested under the Criminal Procedure Code. Rather, they are deprived of liberty and under supervision pursuant to the Act on Foreigners and the Asylum Act<sup>8</sup>, by applying the powers under Article 104 of the Police Act.<sup>9</sup> This is why the information on the rights of foreigners referred to the Shelter should be tailored to their legal and actual situation. They need to be notified of their legal status and the rights they have as individuals under police supervision and foreigners referred to the Shelter. Furthermore, given that not all foreigners understand English, they should be provided with this information in a language they understand, or the Shelter needs to engage an interpreter if necessary.

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<sup>6</sup> The factsheet, *inter alia*, states that the police are under the obligation to bring a foreigner deprived of liberty before an investigating judge (preliminary proceedings judge) without delay, within eight hours at most (should be 48 hours). Under Article 69(2) of the Criminal Procedure Code (Official Gazette of the Republic of Serbia Nos 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14), persons deprived of liberty shall be released from custody if they are not taken before a judge within 48 hours. The factsheet further says that the police are under the obligation to notify the foreigners of all charges against them. These provisions are not applicable to foreigners referred to the Shelter.

<sup>7</sup> The right of the arrested person to, immediately before the first hearing, read the criminal complaint, the crime scene report and the findings and opinions of the court expert(s) and to have a confidential meeting with their defence counsel, which may be monitored only visually (Article 68(1(6)) and Article 69(1(2)) of the Criminal Procedure Code).

<sup>8</sup> Official Gazette of the Republic of Serbia, No. 109/07.

<sup>9</sup> Official Gazette of the Republic of Serbia, No. 6/16.

1.

**FINDING**

Foreigners referred to the Shelter for Foreigners are given factsheets on their rights, which do not fully familiarise them with the situation they are in and the rights they have, and which may lead them to gain the wrong picture of their status.

**FOUNDATIONS**

*Immigration detainees should - in the same way as other categories of persons deprived of their liberty - be entitled, as from the outset of their detention, to inform a person of their choice of their situation and to have access to a lawyer and a doctor. Further, they should be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them.*

*The CPT has observed that these requirements are met in some countries, but not in others. In particular, visiting delegations have on many occasions met immigration detainees who manifestly had not been fully informed in a language they understood of their legal position. In order to overcome such difficulties, immigration detainees should be systematically provided with a document explaining the procedure applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those concerned and, if necessary, recourse should be had to the services of an interpreter.<sup>10</sup>*

*In addition to these three basic rights, international treaties recognise the right of a detained irregular migrant to ask for consular assistance. However, as not all irregular migrants may wish to contact their national authorities, the exercise of this right must be left to the person concerned.<sup>11</sup>*

*With a view to facilitating the exercise of consular functions relating to a national of the sending State, the competent authorities of the receiving state shall at his request inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph.<sup>12</sup>*

**RECOMMENDATION**

**The Ministry of Internal Affairs should provide foreigners referred to the Shelter for Foreigners with a factsheet on their rights immediately on admission, informing them of the legal situation they are in and the rights they are entitled to, which shall include but are not limited to:**

- Information on the legal grounds for referral to the Shelter, the duration of the detention and reasons for extending it and release;**
- Their right to notify a family member or other next of kin person of their referral to the Shelter without delay and at the expense of the Shelter;**
- Their right to request that the diplomatic-consular representative of the state they are nationals of or of the state protecting their interests, or the competent international organisation in case their interests are not protected by any state, are notified of their referral to the Shelter;**

<sup>10</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) Standards (2002) 1 - Rev. 2015, paragraph 30, Excerpts of the VII General Report [CPT/Inf (97) 10], published in 1997.

<sup>11</sup> CPT Standards (2002) 1 - Rev. 2015, paragraph 83. Excerpts of the XIX General Comment [CPT/Inf (2009) 27], published in 2007.

<sup>12</sup> Vienna Convention on Consular Relations, Article 36(1(b)).

- Their rights to contact their legal counsels and to unhindered and unmonitored meetings with their legal counsels and their legal counsels' right to attend all hearings before the authorities;
- Their right to request an examination by a doctor of their choice without delay or, if such a doctor is unavailable, by a doctor designated by the police;
- Their right to be provided with adequate accommodation in case they have health or other special needs;
- That minor foreigners shall be placed in the Shelter with their parents or legal guardians unless the competent custody authority assesses another facility is more suitable for them;
- Their right not to be forcibly removed to a territory where they are at risk of prosecution on account of their race, sex, religion, nationality, ethnicity, membership of a particular social group or political opinion, or to a territory where they are at risk of torture, inhuman or degrading treatment or punishment and their right to apply for asylum in the Republic of Serbia;
- That minor foreigners may not be returned to their countries of origin or third states willing to receive them until their adequate reception is ensured;
- Their right to file a complaint with the Shelter Manager if they believe that their human and minority rights were violated by an action or non-action of a staff member performing his/her official duties.

In 2016, too, third country nationals were removed only to Bulgaria under readmission agreements. Foreigners referred to the Shelter were also removed by plane from Serbia, via "Nikola Tesla" Airport.

### 3. Material Conditions

The living conditions in the Shelter are satisfactory. Foreigners in the Shelter are under the duty to maintain the hygiene of the facilities they are staying in. However, the hygiene of the bathrooms and toilets in the annex with the male dormitories remains unsatisfactory, as the NPM Team noted during its August 2015 visit. During its visit, it observed that the walls in the dormitories in the male annex were filthy and that the cabinets in which the foreigners keep their personal belongings and most of the sanitary equipment were dilapidated. The Team also noted that the equipment for maintaining hygiene in the premises was dilapidated.

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#### *FINDING*

The walls of the male dormitories in the annex of the Shelter for Foreigners are filthy, the level of hygiene in the toilets and bathrooms is unsatisfactory, and the cabinets in which the foreigners keep their personal belongings and most of the sanitary equipment and equipment for maintaining hygiene in the premises are dilapidated.

**GROUNDS**

*Persons deprived of liberty must be treated humanely and with respect to dignity of their person.<sup>13</sup>*

*Foreigners shall be provided with accommodation in the designated Shelter premises, which must be clean, dry, heated, equipped with toilets and bathrooms and have sufficient light, both natural and artificial.<sup>14</sup>*

*Foreigners shall maintain their personal hygiene and the hygiene of their clothing, footwear, bed linen and dormitories, day rooms, toilets and bathrooms and the Shelter grounds.*

*The Shelter premises shall be cleaned every day. The shift leader shall be charged with the schedule of foreigners tasked with cleaning, the time and method of cleaning and monitoring.<sup>15</sup>*

*Holding cells must be clean and maintained and the hygiene in them satisfactory.*

*Persons in police custody should have access to a proper toilet facility under decent conditions, and be offered adequate means to wash themselves.<sup>16</sup>*

**RECOMMENDATION**

**The Shelter for Foreigners should improve the hygiene of the dormitories in the annex designated for the accommodation of men by painting the walls and replacing the dilapidated cabinets for personal items and and sanitary equipment.**

**The Shelter for Foreigners should take the available measures to influence the Shelter residents to maintain personal hygiene and the hygiene of the premises they are occupying and shall put in place conditions for the maintenance of such hygiene by providing them with the necessary cleaning utensils and products.**

**4. Shelter Regime**

The Shelter for Foreigners house rules are laid down in a Guidance issued by the Minister of Internal Affairs.<sup>17</sup> The Guidance includes provisions on the referral to and duration and termination of accommodation in the Shelter, the accommodation of minor foreigners in the Shelter and the costs of transferring foreigners under the Act on Foreigners (paragraphs 2-6 and 10 of the Guidance); forced removal (paragraph 7); the prohibition and consequences of arbitrary departure from the Shelter (paragraphs 8 and 9); the daily activity schedule (paragraphs 11 and 12); the designation of accommodation, accommodation conditions, clothing and footwear, maintenance of hygiene, time foreigners are allowed to spend outdoors, their nutrition, visitation rights, exercise of religious rights, communication with the outside world, procurement of personal items and legal aid (paragraphs 13-23); disciplinary infractions, measures (reprimand, restriction or denial of specific rights, solitary confinement), disciplinary proceedings and the enforcement of disciplinary measures against foreigners violating house rules (paragraphs 24-29); and release of foreigners from the Shelter (paragraphs 30 and 31).

The Excerpts of the House Rules in Serbian, English, French, Russian and Arabic governing the Shelter regime are visibly displayed in the Shelter.

<sup>13</sup> Article 28(1) of the Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia No. 98/2006).

<sup>14</sup> Guidance on Foreigners' Shelter House and Residence Rules 01 No. 12392/09 of 14 October 2009, paragraph 13.

<sup>15</sup> *Ibid*, paragraph 16, subparagraphs 1 and 3.

<sup>16</sup> CPT Standards (2002) 1 - Rev. 2015, paragraph 47, Excerpts of the XII General Report [CPT/Inf (2002) 15], published in 2002.

<sup>17</sup> 01 No. 12392/09 of 14 October 2009.

The Shelter Manager told the NPM Team that the drafting of a new Act on Foreigners was under way, wherefore the valid Guidance will have to be replaced with a new one, in conformity with the new law, once it is adopted.

**In the NPM's view, the new Guidance should, in addition to the above-mentioned provisions, include provisions on personal items foreigners staying at the Shelter are allowed to hold on to and on the safekeeping of items temporarily seized from them, as well as provisions on the exercise and protection of the foreigners' rights (including the right to and procedure for raising the realisation of their rights with the police officers and for filing complaints with the Shelter Manager if they believe their human and minority rights and freedoms have been violated by an action or non-action of a Shelter staff member).**

**Furthermore, given that the valid Guidance lays down that foreigners may take baths at least twice a week in the summer and once a week in the winter, which is insufficient for maintaining personal hygiene, the new Guidance should provide the foreigners with more opportunities to wash themselves.<sup>18</sup>**

**In addition, visits by priests should not be contingent on the presence of a greater number of foreigners of the same religion, like now. Every foreigner should be provided with the opportunity to be visited by and talk to his/her priest, in accordance with the Shelter House Rules.**

Foreigners may move around freely in the Shelter facilities and spend time in open air, in the Shelter yard. They can watch TV and play board games (chess, etc.). With the Manager's approval, they may receive visitors<sup>19</sup> and make phone calls. The embassies of the states they are nationals of are notified of their presence in the Shelter only with their consent.

Foreigners in the Shelter are served three meals a day, including cooked meals. All three meals are caloric, diverse and conform to the residents' religious diet requirements. The foreigners are allowed to purchase items on Mondays and Thursdays – the items they need and can afford are purchased for them by the Shelter staff.

## **5. Communication**

As mentioned above, nearly all the forms (release form, receipt of temporarily seized items, etc.) are available only in Serbian, which considerably hinders the foreigners' familiarisation with the procedures they go through on admission and their situation. This also raises the question of the purpose of having foreigners sign documents they are unable to read or understand. The factsheet on their rights is available in Serbian and English, but problems arise in case the foreigners do not know either of these two languages.

The oral communication between the Shelter staff and foreigners accommodated in it is mostly conducted in English and they are notified of their rights and duties in that manner. Shelter staff communicate with foreigners, who do not know English, with the help of other individuals, usually other foreigners in the Shelter, who know both English and the language the foreigners speak. During its perusal of a case, the NPM Team established that such form of communication, i.e. interpretation, is resorted to also during the performance of specific official duties, which cannot be deemed justifiable.

<sup>18</sup> At least three times a week.

<sup>19</sup> According to the Manager, the Shelter as a rule grants visits, provided they take place during working hours.

A particular problem in communication with foreigners speaking neither Serbian nor English has arisen in providing them with health care. According to the resident doctor, he often cannot communicate with those seeking his help at all, which considerably hinders diagnosing and treating them.

3.

<p><i>FINDING</i></p> <p>The documentation on the treatment of foreigners in the Shelter for Foreigners, drawn up to protect their rights and interests, is available only in Serbian, which considerably hinders their familiarisation with the admission procedures and their legal and actual situations. The factsheet listing their rights is published in both Serbian and English, but some foreigners do not understand either language.</p> <p>Even during the performance of specific official duties, Shelter staff communicate with foreigners, who understand neither Serbian nor English, with the help of other individuals, usually other foreigners in the Shelter, who know English and the language spoken by the foreigners at issue.</p>
<p><i>FOUNDATIONS</i></p> <p><i>Immigration detainees should ... be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them.</i></p> <p><i>The CPT has observed that these requirements are met in some countries, but not in others. In particular, visiting delegations have on many occasions met immigration detainees who manifestly had not been fully informed in a language they understood of their legal position. In order to overcome such difficulties, immigration detainees should be systematically provided with a document explaining the procedure applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those concerned and, if necessary, recourse should be had to the services of an interpreter.<sup>20</sup></i></p> <p><i>Patients are entitled to receive timely information from the competent health professionals which they need to decide whether or not to consent to the proposed medical measures.</i></p> <p><i>Interpretation must be provided for patients who do not know the language in official use in the territory in which the health institution is located. Sign language interpreters must be provided to deaf and mute patients, in accordance with the law.<sup>21</sup></i></p>
<p><b>RECOMMENDATION</b></p> <p><b>The Ministry of Internal Affairs should ensure that the Shelter release forms, receipts of temporary seized items and the factsheet on the foreigners' rights are translated into the languages understood by most foreigners referred to the Shelter (English, Arabic, Farsi, Urdu, etc.), and available.</b></p> <p><b>The Ministry of Internal Affairs shall provide interpreters in the languages spoken by foreigners, who do not know either English or Serbian, in case they have to communicate with the Shelter staff and health professionals clearly and precisely.</b></p>

<sup>20</sup> CPT Standards (2002) 1 - Rev. 2015, paragraph 30, Excerpts of the VII General Report [CPT/Inf (97) 10], published in 1997.

<sup>21</sup> Patient Rights Act (Official Gazette of the Republic of Serbia No. 45/13), Article 11, paragraphs 1 and 5.

## 6. Access to the Asylum Procedure

According to the officials, the admitted foreigners are notified of their right to seek asylum. In the event they express the intention to seek asylum, the officers draw up official minutes thereof and notify the Asylum Office. The Shelter staff escort these foreigners to an Asylum Centre (usually the one in Krnjača). Twenty-two foreigners expressed the intention to seek asylum in the Republic of Serbia whilst in the Shelter since the beginning of the year and all were transferred to the Krnjača Asylum Centre.

## 7. Use of Means of Coercion

According to the officials and the available documentation, physical restraints were applied 23 times since February 2016, exclusively during the transportation of the foreigners, unless they were transported in specialised police vehicles. The practice of physically restraining foreigners during their transportation was established by the Guidance on Treatment of Persons in Police Custody<sup>22</sup> and is in contravention of the Police Act<sup>23</sup> and the clearly established principles of the European Court of Human Rights, which are binding on Serbia. Namely, under these principles, recourse to physical force against a person deprived of his liberty, which has not been made strictly necessary by his own conduct, diminishes human dignity and is in principle an infringement of the right set forth in Article 3.<sup>24</sup> Recourse to means of coercion must be reasonable, necessary and proportionate to the risk. Police officers should be provided with the opportunity to assess whether they need to apply means of coercion, and to what extent, on a case to case basis, whilst taking into account all the objective circumstances. They should be provided with guidance on the facts they need to take into account when deciding on the necessity of using means of coercion (e.g. they may be advised to take into account the age, sex, stature, physical strength and condition of the person at issue).

4.

### *FINDING*

Police officers working in the Shelter for Foreigners almost always physically restrain foreigners to be transported, regardless of whether the conditions for applying this measure, which is provided for by the Police Act, are fulfilled, except when the foreigners are transported in specialised police vehicles.

### *FOUNDATIONS*

*Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.*<sup>25</sup>

<sup>22</sup> 01 No. 7989/12-10 of 10 December 2012.

<sup>23</sup> Under Article 114 of the Police Act (Official Gazette of the Republic of Serbia No. 6/16), physical restraints may be used to prevent attack, resistance, escape or self-harm. Article 255 of the Act lays down that regulations adopted pursuant to the prior Police Act (including this Guidance) shall remain in force pending the adoption of regulations that will supersede them, unless they are contrary to provisions of the Act.

<sup>24</sup> See, e.g., the ECtHR's judgment in the case of *Berlinski v. Poland* (Application Nos. 27715/95 and 30209/96), paragraph 59.

<sup>25</sup> Code of Conduct of Law Enforcement Officials, UN General Assembly Resolution 34/169 of 17 December 1979, Article 3.

*Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.<sup>26</sup>*

*Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; minimize damage and injury, and respect and preserve human life; ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.<sup>27</sup>*

*In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the European Convention on Human Rights.<sup>28</sup>*

*Policing shall be based on the principles of professionalism, depoliticisation, cooperation, cost-effectiveness and efficiency, lawfulness of work and proportionality in the use of police powers, as well as other principles regulating the activities of public administration authorities, and of civil servants, and the procedure in administrative matters.*

*In the performance of police duties, only those measures and means of coercion may be applied that are specified by law and that achieve results without any or with minimum harmful consequences for the persons subjected to such measures.<sup>29</sup>*

*Before exercising police powers, a police officer shall ascertain that all legal requirements for such exercise of powers are met and shall be account for such an assessment.*

*In exercising police powers, the police officer shall act in accordance with the law and other regulations and shall abide by the standards laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the European Code of Police Ethics and other international acts relating to the police.<sup>30</sup>*

*The exercise of police powers shall be proportionate to the need for which they are used. The use of police powers may not cause greater harmful consequences than those that would occur if such powers were not used. Among a number of police powers, the one enabling the performance of the task causing the least harm and delay will be used. When applying means of coercion, attempt shall be made to use them gradually, from least to more severe, and always with the least possible force.<sup>31</sup>*

*A police officer shall apply means of coercion only when otherwise unable to carry out his duty, with due restraint, and in proportion to the danger threatening the legally protected goods and value, and the gravity of the offense being prevented or combated.*

*A police officer shall always use the most lenient means of coercion enabling him to achieve a legitimate goal, in proportion to the reason for such use and in a manner enabling performance of duty without unnecessary detrimental consequences.<sup>32</sup>*

*Physical restraints may be used to prevent assault, resistance, escape or self-harm.<sup>33</sup>*

<sup>26</sup> Code of Conduct of Law Enforcement Officials, UN General Assembly Resolution 34/169 of 17 December 1979, Article 8(1).

<sup>27</sup> Basic UN Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 4 and 5.

<sup>28</sup> ECtHR judgment in the case of *Berlinski v. Poland* (Application Nos. 27715/95 and 30209/96), paragraph 59.

<sup>29</sup> Police Act, Article 32.

<sup>30</sup> *Ibid*, Article 65, paragraphs 1 and 4.

<sup>31</sup> *Ibid*, Article 68.

<sup>32</sup> *Ibid*, Article 105, paragraphs 2 and 3.

<sup>33</sup> *Ibid*, Article 114(1).

**RECOMMENDATION**

**The Ministry of Internal Affairs should amend the Guidance on Treatment of Persons in Police Custody by laying down that physical restraints shall be applied only when strictly necessary, not during the transportation of all persons, as provided for by the valid regulations.**

**The Shelter for Foreigners police officers shall not physically restrain every foreigner they transport in their official vehicles, only when they assess that their physical restraint is necessary and in instances specified by the law.**

No other means of coercion were used in 2016, as they were unnecessary. The justifiability of the use of means of coercion is assessed by the Shelter Manager in the first instance, then the Head of the Foreigners Department and, ultimately, by the Head of the Border Police Directorate.

During its perusal of the documentation, the NPM Team ascertained that the Padinska Skela Shelter for Foreigners has acted on the recommendation the Team issued in its prior report - its officers have been drawing up comprehensive reports on every use of means of coercion and have kept proper records thereof. However, the NPM Team noted that not all the reports included assessments of whether the use of means of coercion was justified and appropriate. Although, as noted above, physical restraints are used by Shelter officers during the transportation of foreigners, as laid down in the Guidance on the Treatment of Persons in Police Custody, the NPM is of the view that the authorised police officers need to assess whether each use of means of coercion was justified and appropriate, notwithstanding the fact that a routine police action is at issue and that such recourse amounts to the direct enforcement of a directive laid down in the Guidance. They would thus not only consistently adhere to the laws and by-laws whilst performing their police duties, but also ensure the enforcement of the principles of lawful work and proportionate exercise of police powers and the fulfilment of policing standards regarding: abidance by the law and suppression of unlawfulness, proportionate use of means of coercion, prohibition of torture and recourse to inhuman and degrading treatment and compliance with professional conduct and integrity norms.<sup>34</sup>

5.

**FINDING**

The justifiability and appropriateness of the use of means of coercion (physical restraints) by Shelter for Foreigners police officers have not been assessed in all cases.

**FOUNDATIONS**

*A police officer shall submit a written report to the superior police officer on any use of means of coercion promptly and no later than 24 hours after the use of means of coercion. The report [...] shall contain data on the means of coercion used, the person against whom they were used, the reasons and grounds for their use, and other facts and circumstances of importance for assessing the justifiability and appropriateness of the use of means of coercion. The justifiability and appropriateness of the use of means*

<sup>34</sup> Rulebook on the Technical Features and Use of Means of Coercion (Official Gazette of the Republic of Serbia, Nos. 19/07, 112/08 and 115/14), Article 23 (1): Immediate police superiors shall perform internal checks to ascertain whether recourse to means of coercion was justified and appropriate in order to ensure the professional and lawful use of means of coercion and, in that respect, the prevention and suppression of excessive use, abuse or other recourse to means of coercion for unintended purposes or for unofficial purposes during additional work or in other non-policing situations.

*of coercion shall be assessed by an authorised police officer or a commission comprising at least three members.<sup>35</sup>*

*Police officers shall notify their immediate superiors of every use of means of coercion via the on duty staff immediately, and shall submit written reports of such use to their immediate superiors within 24 hours at the latest. Immediate superiors must review every recourse to means of coercion and assess whether it was justified and appropriate, unless a special commission is formed to assess its justifiability and appropriateness.<sup>36</sup>*

#### **RECOMMENDATION**

**Authorised police officers in the Shelter for Foreigners shall review every use of means of coercion by police officers working in the Shelter and assess whether it was justified and appropriate in each individual case.**

## **8. Health Care**

The Shelter for Foreigners does not have a doctor or any other health professionals on staff, wherefore health care is provided to its residents by the doctor of the Belgrade Correctional Facility in Padinska Skela, which is located in the immediate vicinity of the Shelter. The Shelter staff said that the foreigners are, as a rule, not subject to check-ups on admission to the Shelter, but are seen by the doctor only if the staff thinks they have health problems or at their own request.

The Shelter for Foreigners keeps a “Register of Medical Examinations of Foreigners” in which the following data are entered: examination reference number; first and last names; date and hour of the examination; reason for the examination; therapy; doctor’s signature and signature of a public official. These data provide the Shelter staff, none of whom are health professionals, with insight in the foreigners’ health and the prescribed therapy. The NPM Team’s perusal of the Register showed that 195 medical examinations had been conducted from 1 January 2016 to the day of the visit.

The doctor enters the data only in this Register; he does not open case files for the people he has examined or keep records of the examinations he performed. The doctor told the NPM team that the police officers did not attend the examinations. In case he needs to prescribe the foreigners a therapy, he prescribes and provides them with medications the Belgrade Correctional Facility has on stock. Children in need of health care are referred to a paediatrician in the Palilula Outpatient Health Clinic. The doctor also refers foreigners in need of specialist examinations to the relevant doctors in health institutions. None of the foreigners examined by the doctor since the beginning of the year were in need of hospitalisation.

If necessary, the doctor examines foreigners prior to their deportation. The NPM team was told that there had been no cases of suspending the forced removal of a foreigner due to his or her poor health. There have, however, been instances when doctors of the Ministry of Internal Affairs or the Ministry Staff Protection Institution escorted forcibly removed foreigners. If necessary, deported foreigners are extended psychological support as well, which is in line with the recommendation the NPM made in its report on the 2015 visit.

<sup>35</sup> Police Act, Article 108, paragraphs 1-3.

<sup>36</sup> Rulebook on the Technical Features and Use of Means of Coercion, Article 24, paragraphs 1 and 3.

The doctor said that his greatest problem was communicating with foreigners who are not nationals of the former Yugoslav republics.

6.

*FINDING*

The organisation of health care of foreigners referred to the Shelter for Foreigners and protection of data on their health and therapies suffer from major deficiencies.

*FOUNDATIONS*

*At a minimum, a person with a recognised nursing qualification must be present on a daily basis at all centres for detained irregular migrants. Such a person should, in particular, perform the initial medical screening of new arrivals (in particular for transmissible diseases, including tuberculosis), receive requests to see a doctor, ensure the provision and distribution of prescribed medicines, keep the medical documentation and supervise the general conditions of hygiene.<sup>37</sup>*

*Health care facilities, private medical practices, welfare institutions and penitentiaries, medical colleges extending health care, as well as other legal persons engaged in specific health care activities in compliance with the law, shall keep medical documentation and records and in the specified timeframes submit individual, summary, and periodic reports to the competent public health institutes, as well as to other organizations in the manner laid down by a separate law.*

*Confidentiality shall be guaranteed of medical data of patients that are processed and submitted for individual, summary, and periodic reports referred to in paragraph 1 of this Article, and/or for the medical documentation and records.*

*Health care facilities, private medical practices, as well as other legal persons referred to in paragraph 1 of this Article shall safeguard the medical documentation of patients from unauthorised access, copying, and abuse, irrespective of the form in which the data from the medical documentation are kept (paper, microfilm, optical and laser disks, magnetic media, etc.), in compliance with the law.<sup>38</sup>*

*Patients shall be entitled to the confidentiality of the personal information they communicate to the competent health professionals or associates, including information regarding their health and potential diagnostic and therapeutic procedures. They shall also be entitled to the protection of their privacy during the performance of diagnostic examinations and medical treatment on the whole.*

*The competent health professionals and associates may not disclose the information referred to in paragraph 1 of this Article to third parties.<sup>39</sup>*

*Data on the health and medical data of patients shall constitute personal data and be deemed particularly sensitive personal data of the patients, as provided for by the law.*

*The data referred to in paragraph 1 of this Article shall be kept confidential by all health professionals and associates, as well as other individuals working in health institutions, private medical practices, medical colleges extending health care, other legal persons engaged in specific health care activities in compliance with the law, mandatory and voluntary health insurance organisations with which the patients are insured, which have access to such data and need them to perform their legally defined competences.<sup>40</sup>*

*Health professionals and associates and other individuals working for employers referred to in Article 21(2) of this Act may be relieved of the duty to keep confidential the data referred to in Article 21(1) of*

<sup>37</sup> CPT Standards (2002) 1 - Rev. 2015, paragraph 91. Excerpts of the XIX General Report [CPT/Inf (2009) 27], published in 2007.

<sup>38</sup> Health Care Act (Official Gazette of the Republic of Serbia, Nos. 107/05,72/09 -др. закон, 88/10, 99/10, 57/11, 119/12, 45/13 - other law, 93/14, 96/15 and 106/15), Article 73, paragraphs 1-4.

<sup>39</sup> Patient Rights Act, Article 14, paragraphs 1 and 2.

<sup>40</sup> Ibid, Article 21, paragraphs 1 and 2.

*this Act only with the written consent of the patients or their legal representatives or under a court decision.*

*The competent health professionals may disclose the data on the health condition of the patients in the event the patients or their legal representatives gave their consent to the disclosure of the data on the health of the patients by a written statement or power of attorney certified by the competent authority. Such consent shall be filed in the medical records.<sup>41</sup>*

*Processing of data on the nationality, race, gender, language, religious beliefs, membership of a political party or trade union, health condition, welfare allowances, victim of violence, criminal charges and sex life, is allowed with the consent of the data subject, unless processing of such data is prohibited under the law even with consent;*

*Exceptionally, data on membership of a political party, health condition and welfare allowances may be processed without the consent of the data subject, only when so stipulated by the law.*

*Data processing in cases referred to in paragraphs 1 and 2 of this Article must be especially designated and protected.<sup>42</sup>*

*In its reports on its visits to Azerbaijan<sup>43</sup> and Germany<sup>44</sup>, the European Committee for the Prevention of Torture took the following views:*

- *the confidentiality of medical data of persons deprived of liberty by the police and extended health care is to be strictly observed, without prejudice to the right of the person concerned to make reference to that medical data;*
- *Medical data (e.g. details of whether a detained person suffered from infectious diseases such as tuberculosis, hepatitis or HIV) recorded by doctors on forms should not be routinely accessible to police officers. In principle, such information should be available to police officers only on a need-to-know basis.*

#### **RECOMMENDATION**

**The Ministry of Internal Affairs should ensure the provision of continuous health care to foreigners referred to the Shelter for Foreigners.**

**Health professionals should keep the health documentation and treatment records of the foreigners confidential and data in such documentation and records should not be available to non-medical staff.**

**Only medical staff should administer therapy (medications et al) to foreigners in the Shelter.**

## **9. Interviews with Foreigners in the Shelter**

Seven foreigners were staying at the Shelter at the time of the visit. (They were nationals of the Former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, the People's Democratic Republic of Algeria, the Democratic Republic of Congo and the Kingdom of Morocco). The NPM Team interviewed three foreign nationals (of Bosnia and Herzegovina, the Kingdom of Morocco and the People's Democratic Republic of Algeria). They were all awaiting forced removal pursuant to a final court judgment, finding them guilty of criminal offences and ordering their deportation. They had no complaints about the way they were treated by the staff or their meals, only about their difficulties communicating with the Shelter staff.

<sup>41</sup> Ibid, Article 22, paragraphs 1 and 2.

<sup>42</sup> Personal Data Protection Act (Official Gazette of the Republic of Serbia, Nos. 97/08, 104/09 – other law, 68/12 – Constitutional Court Decision and 107/12), Article 16, paragraphs 1-3.

<sup>43</sup> CPT/Inf (2004) 36, paragraph 36.

<sup>44</sup> CPT/Inf (2007) 18, paragraph 29.