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БЕОГРАДСКИ ЦЕНТАР
ЗА ЛЈУДСКА ПРАВА

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NATIONAL PREVENTIVE MECHANISM

MONITORING OF THE TREATMENT OF TRANSGENDERED PDLs

Report on the Visit to the Correctional Institution in Belgrade -Padinska Skela

Belgrade, Jun 2016

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1. INTRODUCTION

1.1. 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 Punishment¹, 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 institution of the Ombudsman has formed a separate organizational unit "Secretariat of the National Preventive Mechanism", which performs professional activities NPM, whose mandate is determined by Article 4 of the Optional Protocol for the Prevention of Torture. Secretariat is headed by Secretary of NPM in accordance with the guidelines of the Deputy Ombudsman responsible for the protection of the rights of persons deprived of their liberty.

The Protector of Citizens and the AP of Vojvodina Provincial Ombudsperson have signed a Memorandum on Cooperation in Performing NPM Duties², under which the Provincial Ombudsperson shall actively partake in the visits by the 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 Call³, the Protector of Citizens selected the following associations with which it would cooperate in performing NPM duties: the Belgrade Centre for Human Rights (BCHR), the Victimology Society of Serbia, Dialogue, 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.

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 December 2011.

1.2. INFORMATION ON THE VISIT

1.2.1. GENERAL INFORMATION ON THE VISIT

VISITED INSTITUTION	Correctional Institution in Belgrade -Padinska Skela
PURPOSE OF THE VISIT	Monitoring on the treatment of transgendered PDLs
VISIT CONDUCTED BY	Protector of Citizens in cooperation with the Belgrade Centre for Human Rights
DATE OF VISIT	21 Jun 2016
VISIT ANNOUNCED	The visit was announced
VISIT TEAM	<p>Head of the NPM Team: Jelena Unijat, Secretary of NPM</p> <p>Team Members: Marko Anojčić, <i>Protector of Citizens/NPM</i> Jelena Jelić, <i>Protector of Citizens/NPM</i> Borjana Peruničić, <i>Protector of Citizens Professional Service/ Department for Gender Equality</i></p>

1.2.2. PURPOSE OF THE VISIT

Visit to the Correctional institution in Belgrade - Padinska Skela is primarily aimed the monitoring of the treatment of transgender PDLs during their stay in the institution for execution of criminal sanctions, in order to determine whether these persons are endangered because of their gender identity, whether they are treated with humanity and with respect for the dignity of their personality, whether they are enabled to realize prescribed by law without discrimination and whether they received adequate medical care, as well as to detect their specific needs.

1.2.3. COURSE OF THE VISIT

The National Preventive Mechanism conducts its visits to places of detention in accordance with the adopted methodology, which provides for five stages of each visit.

STAGE I: INTERVIEWS WITH THE INSTITUTION'S MANAGEMENT

The visit of the National Preventive Mechanism team began with an interview with the Deputy Warden, in accordance with the established methodology, because no Warden had been appointed.

In his opening address, the leader of the National Preventive Mechanism team explained the mandate of the National Preventive Mechanism, the intended goals of this visit, the principles of action and the plan of visit to the Institution.

The Deputy Warden gave a brief overview of the Institution's organisational structure and work, highlighted the main issues faced by the Institution in its work and explained in general terms how transgendered persons were treated at the Institution.

STAGE II: TOUR OF THE INSTITUTION

The National Preventive Mechanism team visited the unit for misdemeanour offenders, the area for their stay outside of closed spaces and rooms used for health care provision at the Institution.

STAGE III: SITUATION ASSESSMENT IN SPECIFIC FIELDS

In accordance with the established methodology, stage III of the visit of the National Preventive Mechanism team included interviews with the Institution's officers to determine the conditions in which transgendered persons deprived of liberty were placed and the way in which they were treated.

In addition to the interviews, during stage III of the visit, members of the National Preventive Mechanism team visited certain specific rooms relevant for the area of interest.

STAGE IV: INTERVIEWS WITH PERSONS DEPRIVED OF LIBERTY

During the visit, the National Preventive Mechanism team interviewed 2 transgendered misdemeanour offenders.

STAGE V: FINAL TALKS WITH INSTITUTION'S WARDEN

In accordance with the established methodology, the visit to the Institution ended with talks between the National Preventive Mechanism team and the Deputy Warden.

The National Preventive Mechanism team presented its main impressions of the visit, including in particular the treatment of transgendered persons, the staff's attitude to the National Preventive Mechanism team, the complaints made by persons deprived of liberty and any elements that may lead to torture or inhuman or degrading treatment.

1.2.4. INSTITUTION'S COOPERATION WITH NPM

The Institution's management and all officers on site cooperated fully with the NPM team and allowed it to normally conduct its duties.

The employees were cooperative, answered all questions they were asked, gave the NPM team access to all rooms and installations and allowed it to photograph all sections of the Institution without any restrictions. They allowed free and unsupervised interviews with persons deprived of liberty chosen by the NPM team.

2. FACTS FOUND AND RECOMMENDATIONS

2.1. BACKGROUND ON PERSONS DEPRIVED OF LIBERTY

The Penal and Correctional Institution in Padinska Skela in Belgrade is an open-type facility which is, in accordance with the Bylaw on Placement of Convicts, Misdemeanour Offenders and Detainees at Penal Institutions,⁴ used for incarcerating male persons convicted of unpremeditated criminal offences, regardless of the duration of their sentence, and male persons with first-time prison convictions who have no other criminal proceedings pending and whose sentence or remainder of sentence after deducting the time they spent in detention or other form of deprivation of liberty does not exceed three years⁵, if their permanent or temporary place of residence is in the territories covered by the Higher Courts of Belgrade, Zrenjanin, Kragujevac, Pančevo, Požarevac and Smederevo, as well as male persons who received prison sentences in misdemeanour proceedings, if their permanent or temporary place of residence is in the territories covered by the Magistrates' Courts of Belgrade, Lazarevac, Mladenovac and Obrenovac.

There are no detainees placed at the Penal and Correctional Institution in Padinska Skela in Belgrade; instead, persons of both genders placed in detention in the territory covered by the Higher Court of Belgrade are placed at the County Prison in Belgrade.

According to the Deputy Warden, as at the day of the visit there were 247 persons deprived of liberty placed at the Institution (237 criminal offenders and 10 misdemeanour offenders). He said the number of persons placed at the Institution had been declining since the beginning of the year, as about 290 of them had been placed at the Institution in January. Convicted persons are placed at the closed unit (75 of them), the semi-open unit (117 of them) and the open unit (45 of them).

2.2. BACKGROUND ON EMPLOYEES

According to the Deputy Warden, the Institution has 74 employees in indefinite employment and 7 employees in part-time employment (most of them at the Treatment Service). During the visit it was not possible to consult the job classification rules, because they had been amended two months earlier and had not yet been presented to the Institution. Following the amendments to the job classification rules, the number of scheduled posts was reduced to reflect the *de facto* situation, which meant all posts were staffed and new hiring was not possible, although we have been told that the existing staffing level is insufficient for normal functioning of the Institution.

The Institution has one physician and one nurse in employment. Due to staff rationalisation, a psychiatrist MD who used to work part-time at the Institution is no longer available, although his services are in fact needed. Furthermore, since the dentist retired, convicts who need dental work are taken to the dental surgery at the Penal and Correctional Institution in Belgrade. The Institute employs two graduate lawyers and three professional cooks (one in indefinite employment and two hired for a fixed term). As the Barnyard produces food both for the institution and for the market, we have been told it would be beneficial if the Institution could hire a warehouse keeper.

⁴ Official Gazette of RS No. 31/15

⁵ Other than persons convicted of the following criminal offences: rape, sexual intercourse with a disabled person, sexual intercourse with a child, human trafficking, burglary, robbery, unauthorised manufacturing and sales of narcotics, unauthorised possession of narcotics and use of narcotics.

2.3. IMPLEMENTATION OF THE PROGRAMME OF TREATMENT OF PERSONS DEPRIVED OF LIBERTY

At intake, all persons are placed at the intake unit, where they on average stay between 8 and 10 days. A treatment programme is determined for each convict at this unit, except for those with short sentences (shorter than 30 days). The closed unit is used for the placement transferred from the Penal and Correctional Institutions in Sremska Mitrovica and Zabela in Požarevac because those Institutions are currently stretched beyond capacity. A number of officers of the Security Department have also been transferred to the closed unit. Nevertheless, the number of Security Department officers remains insufficient.

Work duties inside and out of the Institution have been assigned to 150 convicted persons. The convicts placed at the closed unit are assigned administrative duties. Convicts also work at the Barnyard, which, as already noted, produces foodstuffs both for the Institution and for the market. Outside of the Institution, convicts work at the City Hospital, at the Landfill in Vinča and on administrative duties at the Penal and Correctional Institution in Belgrade.

Each wing has communal rooms and all persons are allowed to spend time outside for 2 hours every day. The Treatment Service periodically implements several training courses chosen and designed taking into account the structure of the convicts, the types and structure of the criminal offences they perpetrated and the most common individual objectives. The courses are implemented in the form of workshops, in groups of about 12 convicts, once a week over a period of 6 to 8 weeks. The following courses are available: Alcoholism, Constructive Dispute Resolution and Anger Management, Constructive Problem-solving, Drug Addiction, Release Preparation Course and Professional Training for the Growing of Spring Vegetables and Growing of Medicinal Herbs, in cooperation with vocational secondary schools. Efforts are also underway to establish cooperation with the adult education school "Djuro Salaj" to implement a literacy course for convicts who have not completed primary school. Release preparation plans are prepared after the intake of convicts at the Institution and 9 template programmes are available for this purpose. Persons who have no place of residence after they serve their sentence are sent to the Shelter for Adults and Elderly Persons.

2.4. UNIT FOR MISDEMEANOUR OFFENDERS AND IMPLEMENTATION OF THE PROGRAMME OF TREATMENT OF MISDEMEANOUR OFFENDERS

Misdemeanour offenders are placed at a separate unit within the facility, which also houses the intake unit and the closed unit. As misdemeanour offenders are usually brought by police to serve their sentences, they are mostly assigned to education group C. The misdemeanour offenders who are placed in this section of the building are completely separated from convicts and they have the use of 7 dormitories and one communal room. However, if a misdemeanour offender is placed at the semi-open unit, he comes into contact with the convicts placed at the semi-open unit while serving his prison sentence. They shower in the communal bathroom, to which misdemeanour offenders have access whenever they ask. The bathroom has three showers with faucets. It is sufficiently spacious and clean, but it has no shower booths or screens to protect the privacy of those who take showers.

1.

<p><i>FACTS FOUND</i></p> <p>At the Penal and Correctional Institution in Padinska Skela in Belgrade, the shower area in the communal bathroom used by misdemeanour offenders has no shower booths or screens to protect the privacy of those who take showers.</p>
<p><i>REASONS</i></p> <p><i>Convicted persons are required to maintain their personal hygiene and the hygiene of their clothing and the premises where they spend time. The institution is required to provide equipment and means for maintaining hygiene.⁶</i></p> <p><i>Convicts shall be allowed to shower and given access to hot water for showering minimum three times a week, while convicts who have work assignments shall be given the use of showering facilities every day, in circumstances which protect their privacy. The showering room must have appropriate fixtures and fittings and must be appropriately heated.⁷</i></p>
<p><i>RECOMMENDATION</i></p> <p>The Penal and Correctional Institution in Padinska Skela in Belgrade will ensure the privacy of persons who shower at the communal bathrooms by installing booths or by separating the shower area by screens or other appropriate means.</p>

The outdoor exercise area used by all persons placed at this facility is divided into three sections, so that persons can be brought outdoors in groups. During their stay outdoors, they have access to a ping-pong table and table tennis equipment, basketball backboards and exercise equipment. Each section is sufficiently sized, but none of them are protected from precipitation.

2.

<p><i>FACTS FOUND</i></p> <p>During precipitation, enjoyment of the right to use outdoor exercise facilities is severely hampered for convicts and misdemeanour offenders placed at the facility which houses the intake unit, the closed unit and the misdemeanour unit at the Penal and Correctional Institution in Padinska Skela in Belgrade, because the outdoor exercise area has no canopy.</p>
<p><i>REASONS</i></p> <p><i>Convicted persons are entitled to spend at least two hours outdoors every day, in their free time.⁸</i></p> <p><i>It is also axiomatic that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather.⁹</i></p>
<p><i>RECOMMENDATION</i></p> <p>In the sections of the outdoor exercise (walking) are used by convicts and misdemeanour offenders placed at the facility which houses the intake unit, the closed unit and the misdemeanour unit, the Penal and Correctional Institution in Padinska Skela in Belgrade</p>

⁶ Law on Execution of Criminal Sanctions (Official Gazette of RS No. 55/14), Article 68 paragraph 1 and 2.

⁷ Bylaw on House Rules of Penal and Correctional Institutions and County Prisons (Official Gazette of RS No. 110/14), Article 21 paragraph 3.

⁸ Law on Execution of Criminal Sanctions, Article 68 paragraph 1.

⁹ Standards of the European Committee for the Prevention of Torture (2002) 1 - Rev. 2015, Extract from the 2nd General Report [CPT/Inf (92) 3] published in 1992, section 48.

will install canopies of sufficient size to shelter all persons taken out for walks from precipitation.

2.5. PLACEMENT AND TREATMENT OF TRANSGENDERED PERSONS DEPRIVED OF LIBERTY

The transgendered persons placed at this Institution are transgendered women¹⁰ who mostly serve prison sentences for misdemeanours; they are usually special, multiple reoffenders. According to the Deputy Warden and officers of the Security Department, the fact that such person is transgendered is known to prison officers from the time of her arrival at the Institution. No separate records are kept of such persons. To the best of the Deputy Warden's knowledge, the transgendered women who served prison sentences at the Institution so far have not had secondary sex characteristics of females as a result of hormonal and surgical gender reassignment. As regards personal belongings, they are allowed to keep those that are permitted in accordance with the house rules and they can keep their clothes. If there are two or more of them, transgendered persons are placed together in dormitories. If there is sufficient room, while dormitories are assigned only to such persons; if not, they share dormitories with other misdemeanour offenders, after a mandatory security assessment to ensure that transgendered persons are not exposed to security risks. They are never placed in isolation, i.e. a transgendered person is never placed alone in a dormitory. These persons are allowed to exercise all rights that are available to other misdemeanour offenders, including outdoor exercise. According to the Deputy Warden, so far there have been no complaints by transgendered persons about their treatment by officers or by other persons deprived of liberty. However, we were told by the Institution's physician that there had been cases of transgendered persons complaining about threats or offensive language from other persons deprived of liberty; in such cases they were transferred to different dormitories. The unit for misdemeanour offenders and the outdoor exercise area are covered by security cameras and dormitories are locked overnight.

The Penal and Correctional Institution in Padinska Skela in Belgrade exercises due care when placing transgendered women in dormitories and communal rooms, thus ensuring that these persons safely serve their sentences and enjoy all rights that are available to other persons deprived of liberty. This sets a good practice example for other Institutions to follow.

Searches and body inspections of transgendered women are performed by male officers of the Security Department. The officers address transgendered women as males, reflecting the gender officially assigned to them in their identity documents.

During the visit we found two transgendered misdemeanour offenders (two transgendered women) who were serving 9-day prison sentences. These persons were placed in a dormitory with two other misdemeanour offenders. As the dormitories at the misdemeanours ward are not locked during the day and there is a communal room, these persons were also permanently in contact with other misdemeanour offenders. Both transgendered persons stated they considered themselves to be women, although they had not had full gender reassignment surgery, and their appearance matched that of females, which they identified as (makeup, hair, apparel and behaviour). During interviews, the transgendered women stated they had not experienced any inconvenience from officers either at intake or during their placement at the Institution and said

¹⁰ For the purposes of this report, a transgendered woman is deemed to be a person who, regardless of the information included in their identity document, states she feels as a woman and has certain bodily or other features of a female person (appearance, apparel, hair style, behaviour, expression, speech).

they had been treated fairly by officers. However, they said they had felt uncomfortable when searched by male officers of the Security Department.

3.

<p><i>FACTS FOUND</i></p> <p>Searches and body inspections of transgendered women are performed by male officers of the Security Department and officers of the Institution address them as males, thus violating their dignity.</p>
<p><i>REASONS</i></p> <p><i>Prisons shall be managed within an ethical context which recognises the obligation to treat all prisoners with humanity and with respect for the inherent dignity of the human person.¹¹</i></p> <p><i>In the performance of their daily tasks, prison staff shall respect and protect human dignity and maintain and uphold the human rights of all persons.¹²</i></p> <p><i>Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.¹³</i></p> <p><i>In cases of lesbian, gay, bisexual, transgender and intersex persons deprived of liberty in any place of detention, State authorities must recognize specific risks, identify those who are in a vulnerable situation, and protect them in ways that do not leave them isolated. Special attention should be paid to ascertaining the reasons for arrest, and specific policies must be developed in relation to searches, intake and interrogation.¹⁴</i></p> <p><i>With very few exceptions, State officers are not trained to understand the needs of lesbian, gay, bisexual, transgender and intersex persons and there are no institutional policies and methods to adequately address self-identification, classification, risk assessment and placement.¹⁵</i></p> <p><i>Human dignity is inviolable and everyone shall be obliged to respect and protect it. Everyone shall have the right to free development of his personality if this does not violate the rights of others guaranteed by the Constitution.¹⁶</i></p> <p><i>Persons deprived of liberty must be treated humanely and with respect to dignity of their person.¹⁷</i> <i>Sanctions shall be executed in a manner guaranteeing the dignity of the persons against whom they are being executed.¹⁸</i></p> <p><i>Actions subjecting persons subject to sanctions which subject them to any form of torture, ill-treatment, humiliation or experimentation shall be prohibited and punishable.¹⁹</i></p>

¹¹ Recommendation of the Committee of Ministers to member states on the European Prison Rules Rec (2006) 2, section 72.1

¹² Recommendation of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff CM/Rec (2012) 5, section 11

¹³ Appendix to Recommendation CM/Rec (2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity

¹⁴ Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment CAT/OP/C/57/4, paragraph 76.

¹⁵ Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment CAT/OP/C/57/4, paragraph 79.

¹⁶ Constitution of the Republic of Serbia (Official Gazette of RS No. 98/06), Article 23.

¹⁷ Constitution of the Republic of Serbia, Article 28 paragraph 1.

¹⁸ Law on Execution of Criminal Sanctions, Article 6 paragraph 1.

¹⁹ Law on Execution of Criminal Sanctions, Article 6 paragraph 2.

Searches and body inspections shall be performed in a way which must not be degrading and which respects the mental and physical integrity of the convict and preserves his/her personal belongings.²⁰

RECOMMENDATION

The Penal and Correctional Institution in Padinska Skela in Belgrade shall allow transgendered women at the time of intake at the Institution to choose whether they will be searched and undergo a body inspection only by a male officer or whether they would undergo a combined search and body inspection in which those parts of a transgendered woman's body which are female in appearance would be searched and inspected by a female officer, while the remainder of the body would be searched and inspected by a male officer, while ensuring that neither the male nor the female officer are present during the part of the search and body inspection of the transgendered woman in which they do not participate.

Officers of the Penal and Correctional Institution in Padinska Skela in Belgrade will address transgendered women as females, unless requested otherwise by the transgendered woman concerned.

Employees at the Institution stated they were not specifically trained how to treat transgendered persons deprived of liberty or persons of different sexual orientation. Although the Institution has a list of civil society organisations which can assist such persons after their release and to which persons in need of assistance are referred, the Institution has no information on transgendered advocacy organisations.

4.

FACTS FOUND

At the Penal and Correctional Institution in Padinska Skela in Belgrade, civil servants who are in direct contact with transgendered women and persons of different sexual orientation are not specifically trained to deal with these categories of persons.

REASONS

The Prison Administration shall undertake measures aimed at permanent professional education and advanced training of staff.²¹

Professional education and advanced training of the staff of the Prison Administration shall be conducted at the Centre for Training and Professional Advancement of the Prison Administration.²²

The skills of the Prison Administration's staff shall be maintained and upgraded through professional advancement. Employees of the Prison Administration shall have the right and duty to undergo professional advancement.²³

The Centre for Training and Professional Advancement of the Prison Administration in Niš shall organise and conduct continual training and professional advancement courses for the Prison Administration's staff.²⁴

With very few exceptions, State officers are not trained to understand the needs of lesbian, gay, bisexual, transgender and intersex persons and there are no institutional policies and methods to adequately

²⁰ Bylaw on House Rules of Penal and Correctional Institutions and County Prisons, Article 4 paragraph 5.

²¹ Law on Execution of Criminal Sanctions, Article 12 paragraph 6.

²² Law on Execution of Criminal Sanctions, Article 17 paragraph 1.

²³ Law on Execution of Criminal Sanctions, Article 259 paragraph 1 and 2.

²⁴ Regulation on the Formation of Penal Institutions in the Republic of Serbia (Official Gazette of RS No. 20/06, 89/09, 31/10 and 53/11), Article 9a

address self-identification, classification, risk assessment and placement. That results in violence against such persons and a lack of access to necessary resources and services, such as physical and mental care. The Subcommittee has made recommendations to States parties on providing training and awareness-raising on international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity. Those measures should be aimed at prison staff, law enforcement personnel, prosecutors, judges and other relevant State officers, and should include training on how to communicate effectively and professionally with lesbian, gay, bisexual, transgender and intersex detainees and how to identify and respond to their legitimate needs.²⁵

Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.²⁶

Management shall ensure that, throughout their career, all staff maintain and improve their knowledge and professional capacity by attending courses of in-service training and development to be organised at suitable intervals.

Staff who are to work with specific groups of prisoners, such as foreign nationals, women, juveniles or mentally ill prisoners, etc., shall be given specific training for their specialised work.

The training of all staff shall include instruction in the international and regional human rights instruments and standards, especially the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as in the application of the European Prison Rules.²⁷

RECOMMENDATION

The Prison Administration will organise and implement training for the staff of penal institutions on the standards and principles of equality and non-discrimination with regard to sexual orientation and gender identity, which will include training on how to appropriately, efficiently and professionally communicate with lesbian, gay, bisexual, transgender and intersexual prisoners and how to identify and respond to their legitimate needs.

The Prison Administration will conduct this training in cooperation with civil society organisations which have experience and relevant knowledge in protecting and improving the rights of LGBTI persons, with special focus on the rights of transgendered persons.

As they lacked money and had no contact with their families, none of the interviewed transgendered persons were able to buy coffee or cigarettes, or indeed any other supplies during their placement at the Institution. One of the transgendered persons said she had asked a female officer of the Institution to contact the relevant Centre for Social Work in order to receive a one-off allowance, which the officer promised to do. One transgendered person said she was undergoing hormonal therapy in order to reassign her biological sex acquired by birth to her gender identity, but the hormonal therapy was not available to her at the Institution because she had no one who could bring her the medications; she said she could manage without the hormonal therapy during her brief prison sentence. She also said the Institution's physician was aware of the fact she was on hormonal therapy and had asked her at the time of intake whether she had anyone who could bring her the medications. As a result of the hormonal therapy, this transgendered person had visible secondary sex characteristics of a female. The appearance, apparel and behaviour of both transgendered persons matched their gender identity. Neither of

²⁵ Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment CAT/OP/C/57/4, paragraphs 60 and 79.

²⁶ Recommendation of the Committee of Ministers to member states on the European Prison Rules Rec (2006) 2, section 8

²⁷ Recommendation of the Committee of Ministers to member states on the European Prison Rules Rec (2006) 2, sections 81.2, 81.3 and 81.4

the transgendered persons had brought clothes from home and neither had relatives who could come to visit them and bring them clothes, because they had cut all contact with their family members a long time ago. Both transgendered persons received a sanitary pack at the time of their intake at the Institution; however, they were not provided with underwear or clean clothes to wear after they have taken a shower. They said they had spent all their time at the Institution wearing the same clothes for this reason, but they were allowed to keep the grooming products and the personal belongings they had on their person at the time of their intake at the Institution. Furthermore, both persons said they were able to maintain their personal hygiene and were taking showers more frequently than other persons deprived of liberty, in accordance with their needs. They also said they showered alone.

5.

<p><i>FACTS FOUND</i></p> <p>At the Penal and Correctional Institution in Padinska Skela in Belgrade, misdemeanour offenders sentenced to shorter prison sentences who have no underwear and clean set of clothes to change into serve the entirety of their prison sentence in the underwear and clothes they had on themselves at the time when they were deprived of liberty.</p>
<p><i>REASONS</i></p> <p><i>Prisoners who do not have adequate clothing of their own shall be provided with clothing suitable for the climate. All clothing shall be maintained in good condition and replaced when necessary.²⁸</i></p> <p><i>Convicted persons must maintain personal hygiene and hygiene of their clothing and the rooms in which they stay. The Institution must provide them with supplies and tools for grooming.²⁹</i></p> <p><i>Convicted persons shall be allowed to free underwear, clothing and footwear suitable for the climate.³⁰</i></p> <p><i>Convicted persons shall be provided with clothing, footwear, underwear and bedsheets. During work, convicted persons shall be provided with workplace clothing and footwear.³¹</i></p> <p><i>In accordance with the law governing the execution of penal sanctions, convicted persons shall be provided with free clothing, footwear, underwear and bedsheets suitable for the climate, as well as special any workplace clothing, footwear and equipment where necessary for their work assignments.³²</i></p> <p><i>Clothing shall be changed as appropriate, but in any case at least once every 30 days, while underwear shall be changed minimum three times a week³³.</i></p>
<p><i>RECOMMENDATION</i></p> <p>At the Penal and Correctional Institution in Padinska Skela in Belgrade, misdemeanour offenders sentenced to shorter prison sentences will be provided with clean underwear and clothes if they have no underwear and a clean set of clothes to change into.</p>

One of the transgendered persons uses the right to stay outdoors, while the other refuses to do so in order to avoid insults from persons deprived of liberty who are placed at the closed unit during her walks. Both transgendered persons said they did not feel threatened by other persons

²⁸ Recommendation of the Committee of Ministers to member states on the European Prison Rules Rec (2006) 2, sections 20.1 and 20.3

²⁹ Law on Execution of Criminal Sanctions, Article 81 paragraph 1 and 2.

³⁰ Law on Execution of Criminal Sanctions, Article 84 paragraph 1.

³¹ Bylaw on House Rules of Penal and Correctional Institutions and County Prisons, Article 17.

³² Bylaw on Clothing, Footwear, Underwear and Bedsheets of Convicted Persons (Official Gazette of RS No. 137/14), Article 2 paragraph 1.

³³ Bylaw on Clothing, Footwear, Underwear and Bedsheets of Convicted Persons, Article 3 paragraph 2.

deprived of liberty with whom they shared the prison unit. One of the transgendered persons said she had previously been subjected to illegal and degrading treatment and physical violence by police officers of the Police Administration of Belgrade. One of the transgendered persons said she had previously been in contact with a LGBTI advocacy organisation which focuses on the rights of transgendered persons (Gayten-LGBTI), while the other person said she was in contact with the organisation Jazas (Yugoslav Youth Association against AIDS).

2.6. HEALTH CARE OF TRANSGENDERED PERSONS DEPRIVED OF LIBERTY

We have discussed the issue of treatment of transgendered persons during their placement at the Institution with the Institution's physician. The physician said she was alone with the patient during the examination of transgendered persons and persons of different sexual orientation, while the commanding officer waited outside of the surgery. The fact that a person is transgendered is recorded in that person's medical record, while any gender reassignment therapy can be kept only if prescribed by an appropriately specialised physician and if there is a valid physician's report not older than 3 or 6 months respectively, which is usually not the case, as transgendered persons tend to take hormonal therapy of their own accord. Since hormonal therapy is not included in the positive list of medications, persons deprived of liberty would have to provide money for the therapy themselves even if they had a specialist physician's report. So far there have been no instances of transgendered persons beginning their gender reassignment during their placement at the Institution. If a person demanded this, the physician would refer him to a specialist psychiatric examination at the Special Prison Hospital in Belgrade. During the interview, the physician said there had been cases of transgendered persons complaining about insults and threats from other persons deprived of liberty, but such situations had been handled by transferring the transgendered person to a different dormitory. The physician underscored as highly important the fact that both she and other employees had undergone certain training on appropriate and more efficient treatment of LGBTI persons, which focused on transgendered persons.