



REPUBLIC OF SERBIA
PROTECTOR OF CITIZENS
281-59/16
Belgrade



Заштитник грађана
Zaštitnik građana



BEOGRADSKI CENTAR
ZA LJUDSKA PRAVA

Ref. No. 30620 Date: 10 August 2016

NATIONAL PREVENTIVE MECHANISM

MONITORING OF THE TREATMENT OF MIGRANTS/ASYLUM SEEKERS IN THE REPUBLIC OF SERBIA

Report on the Visit to the Pirot Police Directorate and the Regional Border Police Centre towards Bulgaria

Belgrade, July 2016

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 Protector of Citizens has formed a separate 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 signed a Memorandum on Cooperation in Performing NPM Duties², 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 Call³, 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.

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.

2. MAIN INFORMATION ABOUT THE 2016 VISIT

VISITED INSTITUTIONS	Pirot Police Directorate and Regional Border Police Centre towards Bulgaria
PURPOSE OF THE VISITS	Monitoring of the treatment of migrants/asylum seekers in the Republic of Serbia
VISITS CONDUCTED BY	Protector of Citizens, in cooperation with the Belgrade Centre for Human Rights
DATES OF THE VISIT	26 and 27 July 2016
NOTICE OF VISITS	The visits were pre-notified
VISIT TEAM	<p>Team Leader: Jelena Jelić, <i>Professional Service of the Protector of Citizens/NPM</i></p> <p>Team Members: Marko Anojčić, <i>Professional Service of the Protector of Citizens/NPM</i> Marko Štambuk, <i>Belgrade Centre for Human Rights</i> Milena Roaji, <i>Farsi interpreter</i></p>

2.1. Prior Visits

The NPM visited the Pirot Police Directorate and the Regional Border Police Centre (hereinafter: RBPC) towards Bulgaria in November 2014⁴, and in June⁵ and October⁶ 2015, in order to monitor the treatment of migrants/asylum seekers by the competent authorities.

2.2. Cooperation of Officials with NPM Team

On 26 July 2016, the NPM Team visited the Pirot Police Directorate, Department for Foreigners, Border Affairs and Human Trafficking and interviewed the Head of that Department and the Head of the Pirot Police Directorate.

On the second day of the visit, 27 July, the NPM team visited the RBPC towards Bulgaria and interviewed the Deputy Head of the RBPC.

All police officers in the Pirot Police Directorate and the RBPC fully cooperated with the NPM team, providing it with all the information it required and free access to the documentation on request.

⁴ Protector of Citizens 71 – 88 /14, Ref. No. 35704 Date: 03 December 2014, Protector of Citizens 71 – 89 /14, Ref. No. 36083 Date 5 December 2014

⁵ Protector of Citizens 71 – 52 /15, Ref. No. 24833 Date: 26 June 2015, Protector of Citizens 71 – 54/15, Ref. No. 24826 Date 26 June 2015

⁶ Protector of Citizens 71 – 102 /15, Ref. No. 40485 Date: 3 November 2015

3. PIROT POLICE DIRECTORATE

Identification and Treatment of Apprehended Foreigners

Pirot PD's activities concerning the identification, registration, fingerprinting and photographing of foreigners and the entry of their data into the AFIS and OKS databases have not changed since the NPM Team's prior visits.

After the identity of a foreigner is established and s/he expresses the intention to seek asylum in the Republic of Serbia, the police officers issue him/her a certificate of intent and the Commissariat for Refugees and Migration organise his/her transfer to an asylum centre. The practice has improved since the NPM Team's prior visits insofar as the asylum seekers are now transferred to the asylum centres, rather than left to find their way themselves. The Pirot PD issued 104 certificates of intent to seek asylum as of 26 July 2016.

The PD initiated 21 misdemeanour proceedings against foreigners in 2015. One was discontinued because the defendant expressed the intention to seek asylum; the other 20 proceedings ended with the judges issuing the foreigners warnings. The PD has not filed any misdemeanour motions since the beginning of the year. If the PD apprehends a foreigner staying illegally in the Republic of Serbia and s/he does not express the intention to seek asylum, it issues him a ruling requiring of him/her to leave the country or launches the readmission procedure. The Pirot PD issued 489 rulings requiring of foreigners to leave the country as of 26 July 2016.

In order to implement the readmission procedure, the Pirot PD issues the foreigners travel documents and they are then turned over to the Bulgarian authorities by the Border Police. The Pirot PD issued 117 travel documents to foreigners since the beginning of the year; most of them were nationals of Afghanistan (97).

Migrants are referred to the Shelter for Foreigners only if they are to be subjected to the readmission procedure. Forty migrants were referred to the Shelter during 2016. According to the officers, they have been encountering organisational problems during the readmission procedure. Notably, they have had trouble scheduling the handover of the migrants to the Bulgarian authorities and have often been forced to drive the migrants from the Shelter to the border with Bulgaria and back several times before actually handing them over.

Communication with Apprehended Foreigners and Notice of Their Rights

The police officers said that their communication with the migrants has improved. Inspectors for foreigners said that the representatives of the Commissariat for Refugees and Migration and civil society organisations have been intensively present in the field in the past 3 or 4 months and that they, among other things, provided interpreters and distributed to the migrants brochures with information on the asylum procedure in the Republic of Serbia. Oral communication is still mostly conducted in English.

Migrants' Healthcare

The examination procedure has remained unchanged, i.e. migrants are provided with medical examinations on request. The Department for Foreigners told the NPM Team that one migrant woman had her baby in the Pirot Hospital.

Vulnerable Groups

Police officers told the NPM team that migrant women did not travel alone, but in groups, most often with their family members. Other family members are present while they provide their data to the police; in case of any doubts about the relevance of the data or a problem, the women police officers interview them behind closed doors, in the absence of the other migrants. The Department for Foreigners has two women police officers on staff, which, in its view, suffices for communication with women migrants; when necessary, the Department engages other women police officers working in other departments.

The Pirot PD has not apprehended any unaccompanied minors since the beginning of the year. It always notifies the relevant social welfare centre when it comes upon an unaccompanied minor.

4. REGIONAL BORDER POLICE CENTRE TOWARDS BULGARIA

Identification and Treatment of Apprehended Foreigners

In the first half of 2016, the RBPC registered a total of 2,673 people who illegally crossed the state border⁷. Most were nationals of Afghanistan, Iraq and Syria. The RBPC officials said that most of these migrants had crossed the border on foot or had been smuggled in vehicles.

The procedures for the identification and registration of apprehended foreigners has not changed since the NPM's prior visit. The RBPC said that the registration procedure in its premises lasted six hours at most.

The RBPC issued 3,296 certificates of intent to seek asylum in the first half of the year (and a total of 34,905 such certificates in 2015). The certificates were issued at the makeshift Reception Centre in Dimitrovgrad until the Balkan migrant route was closed and by the RBPC headquarters since. The difference between the number of apprehended migrants and those issued certificates is due to the fact that the migrants used to go to the Reception Centre themselves to express the intention to seek asylum. The police refer the asylum seekers to the asylum centres that have room to take them in after checking which centres have free beds and issuing the asylum seekers the certificates. The transportation of the asylum seekers to the asylum centres is now organised by the Commissariat staff (during the NPM Team's prior visit, in October 2015, they used to be accompanied by the RBPC staff).

RBPC officers file misdemeanour motions against all foreigners, who illegally crossed the border and who they establish have already expressed the intention to seek asylum in Bulgaria. They also file such motions against all foreigners, who do not seek asylum in Serbia and do not belong to vulnerable groups (women, minors, the elderly, etc.). According to RBPC's records, 230 misdemeanour motions for illegally entering the country were filed in the first half of the year (545 such motions were filed in 2015). In most cases, the Misdemeanour Court imposed prison sentences, warnings and fines on the defendants. The readmission procedure is launched once the misdemeanour proceedings are completed and the defendants serve their sentences. The Misdemeanour Court discontinues the proceedings if a foreigner expresses the intention to seek asylum before it and notifies the Asylum Office thereof. The Court avoids imposing prison and financial penalties on families, and usually only issues them warnings.

The RBPC officers' readmission procedure activities have not changed since the NPM Team's prior visit. Namely, if a foreigner, who has not expressed the intention to seek asylum in the Republic of Serbia, has proof that s/he has entered Serbia from Bulgaria, the RBPC notifies the Ministry of Internal Affairs Administrative Affairs Directorate thereof, which decides whether it will submit a readmission request. The foreigner is placed in the Shelter for Foreigners until the completion of the readmission procedure. In case the competent Bulgarian authority grants the request, the foreigner is transferred from the Shelter to the border crossing, where s/he is handed over to the Bulgarian authorities. A total of 115 foreigners were returned from Serbia to Bulgaria under the readmission agreements with the EU in the first six months of the year.

⁷ Their number stood at 5,166 in the first half of 2015 and at 16,074 in 2015.

Communication with Apprehended Foreigners and Notice of Their Rights

The RBPC usually communicates with the apprehended foreigners orally, in English, with the help of a member of the group who speaks their language. The police officers, however, have to assess whether the latter is a smuggler or has an interest in hiding the information provided by the members of the group. The NPM Team has noted an improvement in communication between the police officers and migrants/asylum seekers. Namely, the police officers told it that interpreters were engaged with the help of the Serbian Commissariat for Refugees and Migration, UNHCR and the Red Cross of Serbia. They, however, said they had problems communicating with the migrants, especially those speaking some less widespread languages, such as Urdu and Pashtu. They also said that communication would be facilitated if there were brochures in the languages spoken by most of the migrants, because the ones prepared by UNHCR and the Belgrade Centre for Human Rights have been published only in Arabic and English and provide information only about the asylum procedure.

RECOMMENDATION

The Ministry of Internal Affairs should provide a factsheet on the rights of migrants/asylum seekers in Arabic, Farsi, Urdu and Pashtu, which should be distributed to them by the police officers. These brochures should include information on the legal situation they are in and their rights, including, but not limited to:

- Notice of misdemeanour liability for illegal entry into the country
- Readmission procedure
- Right to an examination by a doctor;
- Prohibition of their forced removal to a territory where they are at risk of persecution on account of their race, sex, religion, ethnicity, nationality, affiliation with a 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;
- Right of complaint to the competent official if they believe their human and minority rights and freedoms have been violated by an officer's official action or non-action.

Migrants' Healthcare

The examination procedure has remained unchanged, i.e. migrants are examined by a doctor on request or when they are obviously in need of healthcare. The RBPC highlighted the good cooperation they had with the local health centres. The relevant medical units intervened five times since the beginning of the year.

Vulnerable Groups

According to the police officers, the Border Police have eight female officers; their work schedule ensures that there is always at least one woman police officer is on duty when the police need to deal with migrant women.

The RBPC notifies the social welfare centre whenever it chances upon an unaccompanied minor. Police officers, certified to work with minors, are charged with dealing with unaccompanied minors. Two such officers work in each shift. The RBPC issues a certificate of intent to an unaccompanied minor, who expressed the intention to seek asylum, only once the social welfare centre issues a ruling on the appointment of his/her guardian. The minor is referred to one of the asylum centres once s/he is issued the certificate of intent. The RBPC apprehended 17 unaccompanied and 145 accompanied minors in the first six months of the year. The 34 minors it had referred to the Establishment for Youths in Niš were transferred to the asylum centres after they sought asylum.