



**REPUBLIC OF SERBIA
PROTECTOR OF CITIZENS**

281-94/16
Belgrade



Заштитник грађана
Zaštitnik građana



БЕОГРАДСКИ ЦЕНТАР
ЗА ЛЈУДСКА ПРАВА

Ref. No. 45687 Date 22 November 2016

NATIONAL PREVENTIVE MECHANISM

MONITORING OF THE TREATMENT OF MIGRANTS/ASYLUM SEEKERS

Report on the Visit to the Belgrade Border Police Station at “Nikola Tesla” Airport

Belgrade, November 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 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 the Republic of Serbia - 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 INSTITUTIONS	Belgrade Border Police Station at “Nikola Tesla” Airport and room in the Airport transit zone in which persons refused entry to the Republic of Serbia are held
PURPOSE OF THE VISIT	Monitoring of the treatment of migrants/asylum seekers
VISIT CONDUCTED BY	Protector of Citizens in cooperation with the Belgrade Centre for Human Rights
DATE OF VISIT	17 November 2016
NOTICE OF VISIT	The visit was pre-notified
VISIT TEAM	<p>Jelena Unijat, <i>Protector of Citizens/NPM</i></p> <p>Team Members: Marko Anojčić, <i>Protector of Citizens Professional Service</i> Jelena Jelić, <i>Protector of Citizens Professional Service</i> Dušan Pokuševski, <i>Belgrade Centre for Human Rights</i> Milena Rojai, <i>Farsi interpreter</i></p>

COOPERATION WITH THE NPM TEAM

All police officers of the Belgrade Border Police Station at “Nikola Tesla” Airport (hereinafter: BPS) fully cooperated with the NPM Team, providing it with all the information, unimpeded access to documentation and private interview with the foreigner refused entry to the Republic of Serbia and held in the transit zone.

1. Introduction

The NPM has in the preceding period visited the “Nikola Tesla” Airport three times with the aim of monitoring the treatment of migrants refused entry to the Republic of Serbia and foreigners who have expressed the intention to seek asylum in the Republic of Serbia and has each time prepared reports with its recommendations.⁴

The NPM Team performed an ad hoc visit to the “Nikola Tesla” Airport on 17 November 2016 after it received information that some foreigners refused entry to the Republic of Serbia have been held in the Airport transit zone for longer periods of time.

2. Interviews with Officers and Perusal of Documentation

The BPS commander said that one of the detained foreigners arrived at “Nikola Tesla” airport on a flight from Istanbul on 31 October 2016. He was denied entry to the Republic of Serbia because the police officers established he was travelling with a forged travel document. He did not immediately express the intention to seek asylum in Serbia, claiming he was on his way to Germany to join his brother and planning to seek asylum in that country. Several days later, when he was to be returned to Istanbul, he refused to board the plane and expressed the intention to seek asylum. The police officers consulted the relevant public prosecution service, which informed them that, should the foreigner decide to launch the asylum procedure in the Republic of Serbia, he would be criminally charged with travelling with a forged travel document, taken into 48-hour custody and that his passport would be seized. The police officers said that the foreigner decided against seeking asylum in Serbia when he was told that he would not be accommodated in minimum security open asylum centre, but that criminal proceedings would be initiated with him, that he would be taken into custody and that his passport would be seized. He was also told he would be returned to Istanbul.

Perusal of the BPS official memo Ref. No. 409/16 of 15 November 2016 showed that the officers on that day interviewed a foreigner, who had arrived on a flight from Istanbul on 31 October 2016 and tried to enter the country, but was denied entry on suspicion that his travel document was forged. The memo further said that a number of attempts were made to return to Istanbul the foreigner, who had come from Iran to Turkey, but that he refused to board the plane. The foreigner expressed the intention to seek asylum during the interview, but also specified that he wanted to travel on to Germany. The officers consulted with the Basic Public Prosecutor about the case; the latter clarified that the foreigner should be taken into custody, that an expert analysis of his passport should be performed, and that a criminal report against the foreigner should be filed and that he should be brought before the Basic Public Prosecution Service. The memo further specified that once this information was relayed to the foreigner, he said he would not be seeking asylum in Serbia and wanted to return to Istanbul. The memo further said the foreigner would be returned to Turkey on 17 November 2016.

The NPM, however, learned that the BPS had been officially notified that the European Court of Human Rights upheld a request by the Belgrade Centre for Human Rights on 16 November 2016 and issued a provisional measure, requesting of the Serbian authorities not to extradite the foreigner until 24 November 2016 and to answer the Court’s questions of relevance to the procedure by 22 November. During its visit, the NPM Team established that the foreigner was to board a plane flying to Istanbul at 12:30 on 17 November 2016 and that the Serbian Solicitor General’s Office – Representation before the European Court of Human Rights Department forwarded the official e-mail on the provisional measure to the Border Police Directorate at 10:32 on 17 November and that the Directorate forwarded the e-mail to the BPS at 11:50 on the same day. The e-mail was not followed up by a telephone call despite the urgency of the matter. **Given that there was a major risk that the foreigner would be put on board the plane and returned to Turkey due to inefficient exchange of information and despite the adopted provisional**

⁴ NPM Reports Ref. No. 71 -13/14 of 3 April 2014, Ref. No. 71-59/15 of 3 July 2015, and Ref. No. 281-88/16 of 19 October 2016.

measure, the NPM indicates that the relevant state authorities should improve the way they exchange information on urgent matters in the future.

3. NPM Team's Interview with the Detained Foreigner

With the assistance of a Farsi (Persian) interpreter, the NPM Team interviewed the foreigner refused entry to Serbia in private. The latter said he had arrived to Serbia on a flight from Istanbul and that he had asked to talk with the BPS commander several times, albeit in vain. He also said that two or three days after he arrived, the police officers took him to the plane door and gave him a ticket, but that he refused to board the plane because he was afraid of returning to Turkey, which would extradite him to Iran, where his life was in danger.

After he refused to board the plane, he tried to find the contact details of someone to help him. He found the UNHCR's contact details on his cell phone and called them up and asked for help, but someone hung up on him and would not answer the phone when he called up again. His brother, who lives in Germany, contacted the Belgrade Centre for Human Rights, which contacted the foreigner by phone, with the assistance of a Farsi interpreter. The foreigner, however, said that BCHR representatives had not visited him at the Airport.

The foreigner said plain-clothes policemen had visited him two days earlier (on 15 November 2016) and asked him to fill a form and enter his real data. He told them he wanted to seek asylum and be transferred to an asylum camp. He was told he would be criminally prosecuted for using a forged travel document, brought before a court and sentenced to prison. The foreigner told the NPM Team he would be better off in jail than in the room he was held in and that he had never abandoned his intention to seek asylum. He also said he was unfamiliar with the procedure and did not know what would happen to him next.

As per the living conditions in the Airport transit zone room in which persons refused entry to the Republic of Serbia are held (hereinafter: room), the foreigner said that the hygiene in it was extremely poor, that it was cold and that the detainees were allowed to smoke in it, which bothered him the most, since he was allergic to tobacco smoke. The other detainees were smoking in the room and he felt nauseous. He was extended medical aid and given medications. He also said he missed sunlight and spending time in open air.

He said he was allowed to keep his luggage and cell phone in the room. He said his meals consisted of merely small sandwiches⁵ and that he gave security guards money (10 Euros every time) to buy him larger sandwiches at an Airport restaurant. He said he had access to potable water.

The NPM Team's attempts to talk to the foreigner in English failed since he hardly speaks or understands the language.

4. Living Conditions in the Room

During its visit to the room, the NPM Team noticed there were no brochures in it with information and contact details of the relevant domestic and international organisations extending assistance to foreigners detained in the transit zone to exercise their rights. The room is furnished with old, quite decrepit armchairs that have been joined together to double as beds and several blankets. The hygiene in the room and toilet/bathroom was satisfactory on the day of the visit. There were toilet rolls and tissues and liquid soap in the bathroom and there was hot water. The room was insufficiently heated.

During its prior visits, the NPM Team had established that the room did not fulfil the valid standards and recommended in its reports that the living conditions in it be improved. The BPS

⁵ During its visit to the room, the NPM Team found several small sandwiches in it, the kind distributed to passengers during the flight.

commander told it that the Ministry of Internal Affairs project on a room fulfilling the standards was to be completed in early 2017.

Perusal of the records kept by Airport security guards regularly monitoring foreigners detained in the room showed that the guards only kept a logbook in which they entered the relevant events during their shifts: start of shift, number of detainees, number of meals, doctor's visits, cleaning times, et al.

In its 2015 Report, the NPM Team recommended to the BPS and the Airport management to put in place and keep records of foreigners kept in the transit zone room and of all facts and developments of relevance to their detention in the room.

5. NPM CONCLUSIONS AND RECOMMENDATIONS

5.1. Engagement of Interpreters

In the NPM Team's opinion, the discrepancies between the police officers' statements and those in the official memo, alleging that the foreigner said he intended to seek asylum, on the one hand, and the foreigner's statements to the NPM Team, which was assisted by an interpreter, on the other, may be the result of difficulties in communication between the foreigner and the officers, wherefore the officers need to engage interpreters whenever they face linguistic barriers impeding their clear and precise communication with foreigners.

RECOMMENDATION

The "Nikola Tesla" Airport BPS is to engage interpreters to ensure clear and precise communication between the police officers and the foreigners when necessary.

The Ministry of Internal Affairs is to enable the engagement of interpreters to facilitate communication between the police officers and foreigners.

GROUND

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.

*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.**⁶*

*It is essential that newly arrived irregular migrants be immediately given information on these rights in a language they understand. To this end, they should be systematically provided with a document explaining the procedure applicable to them and setting out their rights in clear and simple terms. This document should be available in the languages most commonly spoken by the detainees and, **if necessary, recourse should be had to the services of an interpreter.**⁷*

5.2. Better Nutrition

The NPM is of the view that the nutrition of foreigners kept in the transit zone needs to be improved given that it established that the meals provided foreigners denied entry to the

⁶ European Committee for the Prevention of Torture (CPT) Standards CPT/Inf/E (2002) 1 - Rev. 2015, paragraph 30 of the CPT 7th General Report [CPT/Inf (97) 10], published in 1997.

⁷ CPT 19th General Report, paragraph 84 [CPT/Inf (2009) 27], published in 2007.

Republic of Serbia and held in the Airport transit zone were unvaried and insufficient for maintaining the foreigners' health and strength, which is especially concerning in case of foreigners kept in the transit zone for longer periods of time. Furthermore, the food currently provided may not fulfil the religious dietary requirements of all the foreigners.

RECOMMENDATION

The Ministry of Internal Affairs and "Nikola Tesla" Airport are to take measures to improve the nutrition of foreigners refused entry to the Republic of Serbia and held in the Airport transit zone over 24 hours. The meals need to be large enough to maintain the foreigners' health and strength, they need to include at least one hot meal a day and fulfil the foreigners' dietary religious requirements and any health needs.

5.3. Access to Information and Contact Details of Relevant Organisations

Given that the NPM Team noted the absence of brochures with information on the foreigners' rights and procedures for exercising them and with information on how they can contact the relevant domestic and international organisations helping migrants exercise their rights, the NPM is of the view that the foreigners need to be informed about the organisations that can provide them with legal aid. Allowing the foreigners in the room to keep their cell phones and use them does not suffice; they need to be provided with the relevant information as well.

RECOMMENDATION

The BPS at "Nikola Tesla" Airport is to display information on the rights of persons refused entry to the Republic of Serbia and on the procedures for exercising these rights, as well as how they can contact the relevant domestic and international organisations helping migrants exercise their rights. Such information is to be displayed in a visible place in the room in which they are held.

GROUNDINGS

Arrangements should be made enabling detained irregular migrants to consult a lawyer or a doctor on an ongoing basis, and to receive visits from NGO representatives, family members or other persons of their choice, and to have telephone contact with them.⁸

⁸ CPT Standards, paragraph 87, 19th General Report.