



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Concluding observations on the second periodic report of  
Serbia**

Addendum

**Information received from Serbia on follow-up to the  
concluding observations\***

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\* The present document is being issued without formal editing.

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## Introduction

1. The delegation of the Republic of Serbia presented its second periodic report on implementation of the Convention against torture and other cruel, inhumane or degrading treatment or punishment during the 54<sup>th</sup> session of the Committee against torture in Geneva in April 2015. In accordance with the recommendation No. 23 from the Concluding observations of the Committee (CAT/C/SRB/CO/2), referring to the duty of the member state to provide information in written, before May 15, 2016, on actions taken in implementing recommendations 9(a) and 19; the Republic of Serbia reports to the Committee on implementation of the two recommendations.

2. Recommendation No. 9 (a) refers to the duty of the Republic of Serbia to provide independent medical examinations to detainees from the moment of deprivation of his or her liberty. Recommendation No. 19 includes a number of obligations of the Republic of Serbia in connection with a public condemnation of all threats and attacks against human rights defenders, journalists, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and members of the Roma community and their investigation.

## Recommendation No. 9

### a)

3. Ministry of Internal Affairs is working on a draft of the new *Rulebook on the use of police*, in accordance with the new *Police Law*<sup>1</sup>, which in Article 46 stipulates that a police officer carrying out the detention must immediately organize the provision of necessary medical assistance and accommodation in appropriate medical facility, for a sick or injured person, who clearly needs medical help or a person showing signs of severe alcohol or any other intoxication. Also, if requested by medical personnel, police officers of the same sex as the person being examined, for security reasons may attend the medical examination of persons.

4. *Law on Execution of Criminal Sanctions*<sup>2</sup>, *Rulebook on the execution of detention measures*<sup>3</sup> and *Rulebook on the house rules for penitentiaries and district prisons*<sup>4</sup> regulate the medical examination of the detainees and convicts, upon admission to the correctional institution, as well as during their stay. It is stipulated by the rules that detainees are to be examined by a doctor who assesses their medical condition immediately upon the admission to the penitentiary or within 24 hour period at latest. If requested by a convict or due to the medical problems noted, examination is performed without a delay. The first medical examination consists of a visual body inspection of detainees, anamnesis and/or data requisition on acute and chronic diseases, check-up and measurement of basic physical functions (breathing, blood pressure, motor, etc.).

5. Law on Execution of Criminal Sanctions stipulates that in the event of establishing any bodily injuries during the examination of detainees, the doctor is obliged to deliver a written report to the prison governor. The prison governor has a duty to inform the competent public prosecutor's office on cases with grounds for suspicion that a detainee was treated with force.

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<sup>1</sup> "Serbian Official Gazette", No. 6/2016.

<sup>2</sup> "Serbian Official Gazette", No. 55/2014.

<sup>3</sup> "Serbian Official Gazette", No. 132/14.

<sup>4</sup> "Serbian Official Gazette", No. 100/14.

6. Medical record is immediately opened containing data obtained during the examination, as well as the description of the injuries, if any (ascertained on admission or later during the execution of the detention measures or imprisonment).
7. During the admittance to the detention facility, officials inform detainees and convicts on their rights, including the possibility of an independent medical examination.
8. Medical examination is carried out in the presence of medical personnel, and only exceptionally, if requested so by the doctor, examination may be attended by a security services employee.
9. Based on the recommendations of the Ombudsperson, the Board has provided all the institutions for enforcement of criminal sanctions with binding instructions on the manner of conducting the medical examination, according to which medical report must contain the allegations of the person against whom the coercive measures applied on the origin of injuries, objective medical report and opinion of the physician on relevance of the presented allegations, enforcement measures and resulting injuries. The results of the examination are available both to the arrested person and his lawyer. Additionally, should the doctor require presence of the security service employee during the examination, such request must be explained and entered into the medical records.
10. Directorate for Execution of Criminal Sanctions inspects the adherency of the above mentioned standards during the medical examination on regular and extraordinary basis, which, in accordance with the law are performed by the authorized persons of the Department of Inspection.
11. Also, the Directorate for Execution of Criminal Sanctions has distributed to the departments and made available the Law and all listed rulebooks, manual for convicts and detainees as well as the guide to convicts, during the execution of the sentence of imprisonment.

## **Recommendation No. 19**

### **(a)**

12. When it comes to the protection of journalists, the ongoing activities related to the preparation and signing of the agreement on cooperation of the Public Prosecutor's Office and the Ministry of Internal Affairs will be introduced as a priority action in the investigation of threats and violence against journalists with the intention to improve the efficiency of investigations involving attacks on journalists and prosecution of the perpetrators, as well as the drafting and signing of agreements on cooperation between the Prosecutor's Office, Ministry of Internal Affairs and representative associations of journalists, with the intention to increase the safety levels for journalists.
13. In addition to these measures, in order to increase the efficiency of procedures of public prosecutions in criminal proceedings against the perpetrators of crimes against journalists, in December 2015, the Public Prosecutor issued an Instruction stipulating that the Appellate, higher and basic public prosecutors' offices maintain separate records in respect of offenses committed against persons performing activities of public interest in the field of information, related to the activities they perform, as well as records of attacks on the media websites. In these cases immediate action is prescribed.
14. Action Plan for Chapter 23, as part of the accession process of the Republic of Serbia to the EU, provided the establishment of a services network across the country serving to support victims, witnesses and affected parties during all phases of the investigation and all stages of the criminal proceedings, which is particularly important for members of socially vulnerable groups.

15. In exercising activities within its jurisdiction, Ministry of Internal Affairs of the Republic of Serbia provides equal protection of personal security and property safety for all citizens of the Republic of Serbia, regardless of their nationality or ethnicity, and that one of the priorities of the Ministry is represented through the activities on protection of national minorities, i.e., shedding the light on crimes and other incidents committed against members of ethnic minorities. In this context, the Department for Internal Control checks in detail all allegations from all petitions, complaints and other information outlining allegations of possible abuse of police powers and overdrafts at the expense of national minorities.

16. Over the years, the Ministry of Internal Affairs has undertaken activities to improve communications, security protection and exercise of the rights of minority groups. Within those activities, the development of police ethics and training and improving security for the people of same-sex orientation were taken:

- Through the development of the intervention response, with an effort in all cases with threats to LGBTI people, the light is shed on all circumstances and perpetrators are brought to the prosecution. Such cases are among the top police priorities.
- Through prevention action, the aim is that the police officers are present in the area where persons of different sexual orientation gather in order to ensure their safety.

**(6)**

17. Police have developed mechanisms of accountability for the misconduct of police officers, which also refers to the possible discrimination regardless of grounds. These mechanisms have been developed and implemented through the activities of the Department of Internal Control, through direct control of operations and lawful actions executed by managers and line services as well as through the appellate procedure.

18. Due to the different shapes and forms of discrimination, citizens rarely addressed the Department of Internal Control. Those were mostly generalized accusations and assumptions of citizens on the unprofessional conduct of the police officers towards them due to their ethnicity and political affiliation, and in two cases due to sexual orientation.

19. This statement refers only to applications of the applicants, who specifically mentioned in their applications to the Department, that they were the members of certain ethnic minorities, pointing out that they were the victims of illegal and unprofessional conduct of police officers due to their ethnicity.

20. Serbian legislation guarantees the protection of the freedom of expression of national affiliation and prohibits any form of pressure and influence on the allocation of the citizens declaration in terms of belonging to a particular nation or a national minority, and therefore it is not possible to state, with absolute precision, nationality of the applicants.

21. Over the last three years, Department of Internal Affairs has received six complaints from citizens who have complained about discrimination on ethnic grounds - four applications were filed by members of the Roma nationality, one from the members Muslim and German nationality each. Allegations from the first three applications have not been confirmed, and checks the last application are still ongoing.

22. Two applications received by the Department of Internal expressly stated that the police officers intervened unprofessionally towards citizens due to their sexual orientation: in one of them it was indicated that the police officers assaulted two males because they were kissing each other in public and the second one that took place on 7.4.2012. during the identification in the outskirts of the village in the vicinity of Loznica, police officers insulted, belittled and threatened the individual, calling him homosexual.

23. Upon completion of the inspection it was found that all allegations were unsubstantiated.

24. Department of Internal Control took actions on complaints filed by the organization for lesbian human rights, "Labris", or LGBT individuals, which stated that the cause of the address was unprofessional and inappropriate behavior of some police officers towards them during the official proceedings and actions, stating that the officials did not act adequately or not at all on the filed complaints for the violence committed against them, due to their sexual orientation.

25. From 2013 to 2016, no complaints were filed by the organization for lesbian human rights, "Labris" to the work of police officers. A small number of complaints, filed in the earlier period, related to the alleged groundless legitimizing and bringing in of the members by police officers, has not been confirmed in terms of merit of allegations.

26. For the purpose of prevention, activities were taken and all electronic, print media and internet websites were followed on daily basis, through active communication with LGBTI activists, intelligence work and information provision from other state bodies, international police organizations and foreign police services regarding security issues and other preparations for organizing public events "Pride parade" and "Trans parade".

27. After successful preparation, in September 2015, with the effective engagement of the police, it was possible to completely secure the manifestation "Week of pride" and public events "Pride Parade" and "Trans parade".

28. Criminal offenses containing discrimination elements, such as violation of equality under Article 128 of the Criminal Code,

29. Criminal offenses containing elements of discrimination, such as crime of violation of equality under Article 128. Of the Criminal Code, violation of the right of use of language and script under Article 129 of the Criminal Code, violation of freedom of expression of national or ethnic origin under Article 130 of the Criminal Code, racial and other discrimination under Article 387 of the Criminal Code and other, constitute criminal offenses which are prosecuted ex officio, in sense that the public prosecutor is obliged to prosecute when there are grounds for suspicion that such an offense was committed, pursuant to Article 6 of the Code of Criminal Procedure, in accordance with the principle of legality.

30. Amendments to the Criminal Code<sup>5</sup>, Article 54a introduced a special circumstance for sentencing a criminal offense committed out of hatred, since it provides that if the offense was committed out of hatred due to race and religion, national or ethnic origin, gender, sexual orientation or gender identity of the person, that circumstance shall be appreciated as an aggravating circumstance by the court, unless it is not prescribed as offense distinction.

31. In order to analyze the actions of the appropriate Public prosecutor's offices in terms of application of Article 54a of the Criminal Code, Instruction of the Public Prosecutor<sup>6</sup>, among other things, determines the management of specific records of crimes committed out of hatred, pursuant to Article 54a of the Criminal Code.

32. All courts (except the Basic Court in Bečej) do not keep records of the specific types of procedures, subject to the protection against discrimination (human rights defenders, journalists, LGBTI persons, members of the Roma community), so the data obtained on the basis of the items which, under the SAPS were registered as objects of protection against

<sup>5</sup> "Serbian Official Gazette", No. 121/2012.

<sup>6</sup> A.no.802/15 from 22.12.2015.

discrimination (on any grounds, without any labeling regarding the specific grounds in the matter).

*Civil proceedings*

33. Regarding the data related to litigation, we would like to show that an act of discrimination enjoys judicial civil legal protection after the complaint under Article 43 of the Law on prohibition of discrimination, according to the rules of civil procedure.

34. Two cases of this kind were registered in the Supreme Court of Cassation. In the case of Rev 1329/2014, defendant revision of the verdict was rejected as unfounded against AS in Belgrade Gž 2426/14 from 11.6.2014, which established discriminatory behavior of the defendant due to the severe forms of discrimination based on sexual orientation in particular pursuant to Articles 11, 12, 13 and 21 of the Law on Prevention of Discrimination prohibiting the defendant from repeating the same discrimination. In the case of Rev 853/2014, part of the claim founded the prohibition of entry of children of Roma national minority to the restaurant "M ...." in Novi Sad, the defendant committed direct discrimination on grounds of ethnicity.

35. Decision on Rev 853/14 from 3.9.2014, the court revoked the decision of the lower instance court and the case was returned to the first instance court for retrial. According to data received from Appellate Court in Belgrade, in the area covered by that court, the First Basic Court in Belgrade led the three cases of civil proceedings in the field of legal protection against discrimination: human rights defendants, journalists, LGBTI people and members of the Roma community as follows:

- Case No. P 45073/13, claim by Commissioner for Protection of Equality against ALKA ltd.
- Case No. P 20677/11, Gay straight civil alliance against PRESS daily newspaper.
- Case No. P 8256/12 claim by Commissioner for Protection of Equality and NICEFOODS restaurants.

36. These cases were submitted to the jurisdiction of the High Court in Belgrade, as the First Basic Court in Belgrade is not responsible for conducting of litigation in the field of legal protection against discrimination. Before the Basic Court in Vrsac proceedings were conducted in relation to LGBTI persons in order to establish discriminatory treatment and non-pecuniary damage (P 33/11).

37. Other courts within the area of the Appellate Court in Belgrade did not have this type of litigation. Three such cases were reported in Appellate Court in Novi Sad: 1) a case dealing with the abuse of journalists at work in which the Court adopted the first instance verdict, that was confirmed later in the second degree verdict; 2) a case dealing with discrimination of Roma people, in which the Court adopted the first instance verdict, that was followed by the second degree verdict; 3) case dealing with discrimination of the LGBTI members (first instance verdict rejecting the request, a second instance verdict partially revised the first instance verdict).

38. In the area covered by the Appellate Court in Novi Sad, before the High Court in Novi Sad, two sets of civil proceedings were held in the field of legal protection against discrimination of LGBTI persons. One was legally solved by partially approved claim (7/14 P1), a the second case is still pending (P1 56/14); The procedure in the field of legal protection against discrimination of the Roma community (P 33/14) is still ongoing.

39. Before the Basic Court in Loznica a procedure is ongoing in the field of discrimination, while two cases ended with a ruling of incompetence, which have become final. Other higher courts (and basic) on the territory covered by the Appellate Court in Novi Sad did not have this type of litigation.

40. According to data provided by the Appellate Court in Nis, in the area of that court, only the High Court in Vranje conducted a civil lawsuit for discrimination against the Roma community. The procedure was legally terminated and claimants request was rejected; This decision was upheld by the Appellate Court in Nis.

41. In the area of the Appellate Court in Kragujevac, one civil action in the field of legal protection against discrimination was led, before the Basic Court in Kraljevo.

42. The verdict P 2310/14 from 09.02.2014, rejected the claim as unfounded. The procedure is still not legally completed.

43. Higher and other basic courts from the territory of the Appellate Court did not initiate proceedings conducted in the field of legal protection against discrimination of human rights defendants, journalists. LGBTI persons and members of the Roma community.

#### *Criminal proceedings*

44. In regard to the data related to criminal proceedings, we inform you that in the period from 1.1.2010 to 31.12.2015, the Supreme Court of Cassation has not recorded any cases pertaining to the information requested.

45. According to data provided by the Appellate Court in Belgrade:

- The Higher Court in Belgrade had a total of three cases being handled for the crimes of racial and other discrimination under Article 387, paragraph 4 of the CC (when expanding or otherwise making publicly available texts, images or any other representation of ideas or theories advocating or inciting hatred, discrimination or violence against any person or group of persons based on race, color, religion, nationality, ethnic origin or other personal characteristic), one of those was validly terminated, or proceedings were suspended due to the withdrawal of the public prosecutor, while two processes lead to a criminal offense under Article 387, paragraph 4 of the Criminal Code for the crime under Article 387, paragraph 2 CC (persecuting organizations or individuals for their commitment to the equality of people).
- First Basic Court in Belgrade had a total of three cases and one criminal proceeding for a criminal offense under Article 387 of the Criminal Code (private criminal complaint was forwarded to the relevant prosecutor's office as a criminal complaint requesting legal protection of the Roma community), two criminal proceedings were conducted for criminal offense of violation of equality under Article 128 of the Criminal Code and the criminal offense of racial and other discrimination law under Article 387 of the Criminal Code, with the decision rejection of the bill of indictment, legal protection was sought for LGBTI persons.
- Third Basic Court in Belgrade had a criminal proceedings conducted for the criminal offense of violation of equality under Article 128, paragraph 2 CC (if the act referred to in paragraph 1 has been committed by an official in discharge of duty) that was lawfully terminated by making the decision to reject the indictment.

46. On the territory of the Appellate Court in Kragujevac, two criminal proceedings were conducted as follows:

- In the Municipal Court in Jagodina, for the subsidiary bill of indictment for the crime of violation of equality under Article 128 of the Criminal Code, the court decided to reject the indictment.

- In the Municipal Court in Paracin, criminal proceedings were conducted for the criminal offense of violation of equality under Article 128 of the Criminal Code which was legally ended, acquitting the defendant.

47. In the area of the Appellate Court in Nis, three criminal proceedings were conducted for an offense under Article 128 of the Criminal Code and the three criminal proceedings for the crime of violation of the freedom of expression of national or ethnic origin under Article 130 of the criminal offense of racial and other discrimination Article 387 of the Criminal Code as follows:

- Higher Court in Leskovac, for the crime of violation of equality under Article 128, paragraph 2 of the CC, decided to reject the indictment.
- Higher Court in Prokuplje conducted the investigation for a criminal offense under Article 128 of the CC, rejecting the indictment.
- Municipal Court in Leskovac conducted a prosecution for an offense under Article 128 of the Criminal Code, reaching a verdict acquitting the defendant of charges in a final decision.
- Two private lawsuits were filed in the Basic Court in Vranje for crimes under Article 130 of the Criminal Code and Article 387 of the Criminal Code that were resolved in suspension of the proceedings.
- Criminal proceedings for offense under Article 130 of the Criminal Code and Article 387 of the Criminal Code were held in the Basic Court in Negotin that ended in rejection of criminal charges.

48. According to the report from the Appellate Court in Novi Sad, this Court has not recorded any cases of this kind.

(c)

49. Regarding the training of public prosecutors and deputy public prosecutors, at the end of 2015, in cooperation between Judicial Academy and the Office for Human and Minority Rights, with the support of the Democratization Department of the OSCE Mission to Serbia, a pilot program “Hate crimes – Training for the judiciary” was introduced, as a part of the continuous training of judges and public prosecutors and assistant prosecutors. Training on the legislation in the area of hate crimes has been foreseen for the period 2015-2016, and the main objective of the training is to acquire specific knowledge related to the introduction to the concept of hate crimes, which include, among other, the definition of the concept, and getting to know the specifics of the concept of hate crimes, the relevant provisions of international law and jurisprudence of the European Court of Human Rights and UN Committee.

50. In cooperation with the organization for lesbian human rights, “Labris”, in order to improve cooperation between the police and the LGBTI population, during 2015 several seminars were held for about 120 police officers from all regional police administrations involved in jobs covering permanent duty covering the topic of “same-sex orientation and gender identity in the work of police officers”.

51. Also, police officers who have successfully completed specified training in February 2016 were obliged to hold one-day training (in several sessions) for all police officers who perform permanent duty in the organizational units within the police administration.

52. During February 2016, in Novi Sad, Kragujevac, Nis and Belgrade (two terms), in cooperation with the organization for lesbian human rights, “Labris” association “Belgrade Pride”, association “Duga”, support group for young LGB people “Izadi” and other, debates titled “police work in collaboration with the LGBT community – discover the liaison



officers” were held, with a goal to present the policing activities on improving the position of persons of same-sex orientation to the LGBT community.

53. Please note that employees within the Ministry of Interior and police are obliged to treat everyone equally regardless of their race, gender or ethnicity, their differences arising from their social origin, birth, religion, political or other opinion or orientation, gender and gender identity, property status, culture, language, age or mental or physical disability.

**(d)**

*Police work with Roma community in 2015*

54. Police officers actively cooperate with representatives of the Roma community, through participation in round tables and panel discussions organized by the Roma civil society organizations (“The League of Roma”, “Yu POM center”, “Roma Initiative”, etc.).

55. Representatives of the Ministry of Internal Affairs participate in the meetings as members of the Steering Committee in the project “European support for Roma inclusion”, implemented by the OSCE Mission in Serbia, in coordination with the Office for Human and Minority Rights, with the support of the European Union, and in support of the application “National strategy for the Advancement of Roma” in the Republic of Serbia.

56. In order to encourage admission of Roma to the police, Ministry of Interior in cooperation with the Association “European Roma police officers” organized in February and March 2015 six preparatory workshops in several cities in Serbia, for about 280 Roma women and men with an accent to improved psychological preparation and other testing for better preparation for competing for the basic police trainings.

57. During November and December 2015, Ministry of Interior backed up the Association of “European Roma police” in organizing their two seminars with the aim of developing an action plan of the association for improving the position Roma community in the police.

58. Ministry of Interior has been actively involved with other state authorities and Roma associations on the development of a new Strategy for improving the position of Roma for the period 2015-2025.

59. Given the problems encountered by members of the Roma minority, special attention was paid to improving communication with representatives of the police and members of the Roma community, as well as animation and encouraging members of the community to apply for vacancies in the police. In addition to this, representatives of the Roma community were given an opportunity to the training of police officers - trainers in this field, to present the customs and security needs of the local Roma community, which are important for the work of the police and the implementation of their security protection.

60. In local communities including a number of Roma communities, part of the local security bodies involved Roma representatives, contributing to the development of local security initiatives for the prevention of crimes, and improving the situation of Roma communities.

61. Police officers in the Republic of Serbia conduct direct visits on daily basis, make direct contacts with representatives of Roma and take action for their own safety. Regarding the safety and protection of the Roma, especially vulnerable categories such as children and women who are often victims of various forms of violence, preventive and media campaigns were organized in cooperation with civil society and other state authorities to educate the population and the development of public awareness regarding these sensitive issues. One of the objectives of the campaign is reduction of dark figures – for unreported events and encouraging reporting of cases of violence in order to reduce violence tolerance. For example, in several Serbian cities, discussions and lectures were held for women from the Roma community on the topic “Domestic Violence and Human

Trafficking” in cooperation with Roma and other civil associations and social welfare centers.

62. During February 2016, in cooperation with the organization for lesbian human rights, “Labris”, organization “Belgrade Pride”, association “Duga”, support group for young LGB people “Izlaz” and others, debates were held in Novi Sad, Kragujevac, Nis and Belgrade (two terms), on “police work in collaboration with the LGBT community – discover the liaison officers”, in order to present police work and activities aimed at improving the status and protection of persons of different sexual orientation.

63. To present police activities to LGBT community and improve the position of persons of same-sex orientation.

## Annex

In connection with item 10 of the Concluding Observations of the Committee regarding the consideration of the second periodic report of the Republic of Serbia, regarding the impunity of torture and ill-treatment, we clarify that the prosecution of perpetrators of the criminal act of abuse and torture in violation of Article 137 of the Criminal Code ex officio, and that the public Prosecutor, in accordance with Article 6 of the CPC, is obliged to prosecute when there are grounds for suspicion of a criminal offense committed or that a person has committed a criminal offense which is prosecuted ex officio. Additionally, it is explained that according to Article 495 of the CPC, in proceedings for criminal offenses punishable by fine or imprisonment up to eight years provisions of the simplified procedure are applied. This is a case of a shortened process form, which can be implemented by accelerating the procedure and omitting individual stages from the procedure as indicated in the Recommendation No. R(87)18 by the Council of Europe Committee of Ministers, on the simplification of criminal justice. Namely, in fast-track criminal proceedings investigation is not conducted, but before the indictment, the simplified procedure may take certain evidentiary actions, which are usually conducted during the investigation (e.g. Hearing of the suspect, the questioning of witnesses, expert analysis, investigation, seizure, warrant).

In this sense, regarding the connection with the statement in the concluding observations that “due to the changes of the Code of Criminal Procedure from 2013, the public prosecutor is not obliged to carry out an investigation in cases of torture that fall within the scope of Article 137, paragraph 2 and 3. the criminal Code” we point out that although investigation stage is not anticipated for the proceedings for criminal offense under article 137 (paragraphs 1, 2 and 3) of the Criminal Code, the public prosecutor is obliged to prosecute when there are grounds for suspicion that the criminal act was committed, since it is the case of a criminal offense which is prosecuted ex officio, provided that the evidentiary actions, which are normally taken during the investigation for this crime are taken in fast-track proceedings, as soon as possible, which is important in terms of the efficiency of the process.

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