



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

Distr.: General
22 February 2023

Original: English
English, French and Spanish only

Committee against Torture

**Information received from Serbia on follow-up to
the concluding observations on its third periodic
report***

[Date received: 14 February 2023]

* The present document is being issued without formal editing.



Introduction

1. The Delegation of the Republic of Serbia presented its Third Periodic Report on the Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at the 72nd meeting of the Committee against Torture in Geneva, in November 2022. In accordance with recommendation 45 from the Committee's concluding observations (CAT/C/SRB/CO/3), which refers to the State Party's obligation to provide, by 30 December 2022, written information on follow-up to recommendations No. 8, 12 and 20(a), the Republic of Serbia reports to the Committee on the implementation of these three recommendations.

2. Recommendation No. 8 refers to the obligation of the Republic of Serbia to incorporate into the legal definition of torture all the elements contained in Article 1 of the Convention. Recommendation No. 12 refers to the national human rights institution, while recommendation No. 20(a) refers to impunity for acts of torture and ill-treatment.

Follow-up information relating to paragraph 8 of the concluding observations (CAT/C/SRB/CO/3)

3. The Ministry of Justice formed the Working Group for the analysis of the effectiveness of the criminal justice system in May 2021. The Working Group operates on the basis of completed cases with the purpose of identifying and eliminating the system's weaknesses and shortcomings and drafting the working text of the Law on Amendments to the Criminal Code of the Republic of Serbia. This activity is also envisaged by the Revised Action Plan for chapter 23 "Judiciary and Fundamental Rights". The Working Group actively held meetings and proposed certain amendments to the text of the Criminal Code ("Official Gazette of the RS", Nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019).

4. In regard to Art. 136 and 137 of the Criminal Code, the Working Group concluded that the basic forms of these two criminal offences overlap and proposed that Article 136 is either rephrased or deleted. Considering that Article 136 paragraph 1 of the Criminal Code is almost identical to Article 137 paragraph 3 relating to paragraph 2 of the Criminal Code, the Working Group believes that it is most expedient to consider either amending or possibly deleting Article 136 of the Criminal Code, in accordance with the proposal made at the meeting of the Working Group. On the other hand, it was concluded that the content of Article 137 paragraph 2 of the Criminal Code matches Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment.

5. The National Assembly of the Republic of Serbia was dissolved by the Decree of the President of the Republic of Serbia on 15 February 2022. The general elections in the Republic of Serbia were held on 3 April 2022, and the final results of the parliamentary elections were announced on 5 July 2022. The new convocation of the Parliament of the Republic of Serbia was established on 1 August 2022, while the Government was formed on 26 October 2022.

6. During the reporting period, due to the aforementioned circumstances, the Republic of Serbia was not in a position to take legislative measures aimed at abolishing the statute of limitations for the criminal offences that contain elements of torture.

Follow-up information relating to paragraph 12 of the concluding observations

7. In November 2021, the National Assembly of the Republic of Serbia adopted the new Law on the Protector of Citizens, which improves the independence and efficiency of the work of this institution. The Protector of Citizens was entrusted with new responsibilities - the tasks of the National Independent Mechanism for monitoring the implementation of the Convention on the Rights of Persons with Disabilities, the duties of the National Rapporteur on Trafficking in Human Beings, and the position of a special body that protects, promotes

and improves the rights of the child. The new Law also includes a provision that the Protector of Citizens performs the tasks of the National Preventive Mechanism (NPM), which were entrusted to him/her in 2011 in accordance with the Law on Ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment.

8. In December 2021, the Global Alliance of National Human Rights Institutions (GANHRI) confirmed that the Protector of Citizens of the Republic of Serbia has the highest status of the national human rights institution.

9. In the period from 1 December 2021 to 15 October 2022, while performing the tasks of the National Preventive Mechanism, the Protector of Citizens conducted 68 visits to places where persons are or may be deprived of their liberty. Out of the stated number, the NPM conducted 66 visits since the beginning of 2022. In this regard, the NPM this year conducted a total of 36 visits to police administrations, that is, police stations within their composition. All the visits were unannounced and some of them were night visits. This year, the HPM conducted a total of 22 visits to the institutions for the execution of criminal sanctions, all of which were also unannounced. Since the beginning of the year, the NPM conducted three visits to psychiatric institutions, which were announced because these are the first NPM's systematic visits to this type of institutions.

10. The institutions where persons are or may be deprived of their liberty, which the HPM visited and made recommendations to, established good cooperation which enabled the NPM to act in accordance with its mandate defined by the Optional Protocol to the UN Convention against Torture (enabling announced and unannounced visits to detention facilities, access to all premises and installations, insight into all data, as well as conducting interviews with all persons deprived of their liberty, employees and any other persons chosen by the NPM).

11. In terms of visits to social care homes, during two visits at the beginning of this year, the NPM faced difficulties in fulfilling its mandate. During one visit, which was unannounced, the members of the NPM team were not allowed to undertake a visit due to the epidemiological situation and for the reason that there were six beneficiaries in the institution who tested positive for COVID-19. During the second visit, which was announced, the institution submitted to the NPM an opinion of the Institute for Public Health in Pančevo, in which it was stated that it is necessary to postpone the visit until the epidemiological situation in the South Banat District and the institution itself improved. The Protector of Citizens published on its website news that it was not possible to conduct these two visits and that, due to the above stated, the Protector of Citizens entered into a dialogue with the line ministry, after which the NPM was able to fulfil its mandate undisturbed, and, consequently, five visits to social care homes were conducted this year, one of which was unannounced.

12. In addition to employees working for the Protector of Citizens, i.e. the NPM, representatives of the Provincial Ombudsman also participated in the visits and preparation of reports and recommendations when they involve visits to the institutions located on the territory of AP Vojvodina, as well as representatives of the civil society organisations with which the Protector of Citizens concluded cooperation agreements.

13. After an open call, which was announced on 22 July 2022, the Protector of Citizens adopted a Decision on the selection of associations with which he/she will continue cooperating in the future in performing NPM's duties, and in accordance with the above, cooperation agreements were concluded with associations with which the NPM has cooperated so far: the Human Rights Committee Valjevo, Centre for Youth Integration, Victimological Society of Serbia, Helsinki Committee for Human Rights in Serbia, Lawyers' Committee for Human Rights, as well as with new association KlikAktiv - Centre for Development of Social Policies. Thus, the number of associations with which the Protector of Citizens cooperates in performing NPM's duties increased to six.

14. Also, as part of the project "Enhancing human rights protection of detained and sentenced persons in Serbia" - phase II, the Protector of Citizens, in cooperation with the Council of Europe, participated in the training of healthcare workers and employees of social care institutions in the treatment of persons placed to psychiatric institutions and social care homes. Until today, trainings have been organised for employees in the Special Psychiatric Hospital in Kovin, the Special Psychiatric Hospital in Gornja Toponica, the Special

Psychiatric Hospital "Dr. Slavoljub Bakalović" in Vršac, the Psychiatric Clinic "Dr. Laza Lazarević" in Belgrade and the Psychiatry Clinic of the Clinical Centre in Niš. With regard to social care homes, trainings were attended by employees of the Institution for Adults and Elderly "Gvozden Jovančičević" in Veliki Popovac, Home for Persons with Mental Disabilities "Otthon" in Stara Moravica and Home for Children and Persons with Developmental Disabilities "Dr. Nikola Šumenković" in Stamnica. The training participants had the opportunity to familiarise themselves with the general standards of the Council of Europe for the protection of the rights of persons in these institutions, the compliance of domestic regulations with international standards, recommendations of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after a visit to the Republic of Serbia in 2021, NPM's mandate and work methodology, and NPM's most significant recommendations for the visited institutions and competent ministries.

15. In accordance with the NPM's work methodology, in reports on visits to the institutions where persons are or may be deprived of their liberty, the NPM determines conditions and circumstances that may favour the occurrence of any form of abuse and makes recommendations for eliminating observed deficiencies. When the NPM determines that certain conditions and circumstances may favour the occurrence of abuse, it sends recommendations to the visited institution so that the institution could improve its actions and harmonise them with applicable regulations and standards. Along with the sent recommendation, the HPM states relevant regulations and standards with which actions should be harmonised. Reports are submitted to the visited institution and competent ministry, which are, as a rule, given a deadline by which they need to make a statement that they act upon sent recommendations. After that, if necessary, a dialogue is established with the visited institution, i.e. line ministry, with the aim of assessing the situation in the visited institution and the system as a whole, primarily to find the best way to implement recommendations made by the NPM after the visit.

16. Also, in accordance with the NPM's work methodology, in order to maintain a balance between confidentiality and transparency in work, the NPM publishes a report on the visit to the institution, in which all personal data are anonymised, after receiving a response of the visited institutions and competent ministry on activities undertaken in compliance with the recommendations from the NPM's report. Reports and responses of the authorities are published on the Protector of Citizen's website and NPM's page. In this manner, all reports sent to the competent authorities are published and publicly available.

17. On 28 December 2021, the Institution of the Protector of Citizens celebrated ten years of the operation of the NPM. The jubilee celebration took place in the Palace of Serbia in Belgrade, and was attended by guests and representatives of international organisations, the Provincial Ombudsman, civil sector organisations, as well as state authorities with which the NPM cooperated successfully over the previous decade. The jubilee celebration also included a short film which NPM employees made with the support of film participants coming from the civil sector, state authorities and institutions with which the NPM particularly successfully cooperated over the past ten years. Also, publication "Ten years of the work of the National Preventive Mechanism" was published.

Follow-up information relating to paragraph 20 (a) of the concluding observations

18. With regard to the investigation of police abuse, the procedure of the state authorities of the Republic of Serbia is, in addition to the law, regulated by the Methodology for conducting an investigation in the case of police abuse, which the Internal Affairs Sector of the Ministry of the Interior consistently implements in cooperation with public prosecutor's offices. Also, on 18 October 2017, the Minister of the Interior issued the Instruction on the methodology for conducting an investigation in the case of police abuse, which ensured an impartial manner of conducting an investigation in relevant cases.

19. According to the mentioned methodology, an investigation is conducted by a public prosecutor, and exceptionally he/she can entrust execution of certain evidence collecting

procedures to the Internal Affairs Sector of the Ministry of the Interior. An investigation should not be conducted by a public prosecutor who was involved or is involved in a case in which the injured party (alleged victim of abuse) is the defendant or a witness. Accordingly, if in the course of any criminal proceedings someone makes a credible allegation or there are clear indications that the defendant or a witness was abused, a separate criminal case will be opened in which such allegations will be verified and another public prosecutor will be assigned to it.

20. We believe that recommendation No. 20(a) should be jointly examined by several state authorities, and a decision will be adopted about this.
