

# **CHILDREN'S RIGHTS BEHIND BARS**

## **Human rights of children deprived of liberty: Improving monitoring mechanisms**

### **NATIONAL REPORT - REPUBLIC OF SERBIA**

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## 1. Introduction

### 1.1. List of abbreviations

<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984
<b>CPT</b>	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, adopted by the member states of the Council of Europe, meeting at Strasbourg on 26 November 1987
<b>OPCAT</b>	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006
<b>NPM</b>	National Preventive Mechanism

### 1.2. Partner and researcher

#### ***Child Rights Centre***

The Child Rights Centre is non-party, non-profit and non-governmental organisation, whose main aim is the implementation of the Convention on the Rights on the Child.

The Centre's activities are accordingly focused on the adoption and implementation of the laws, policies and practices enabling the promotion of the wellbeing of the child, the protection of their rights and their full participation in society.

The Child Rights Centre carries out its activities in the entire territory of the Republic of Serbia. So far, the Centre has organised a large number seminars in the domain of child rights for other civil society organisations and for professionals working in justice, social protection, police, media, education, etc.

In the 16 years of its existence, the Centre has implemented a significant number of important projects with the aim of introducing changes in legislative practice, disseminating notion on the protection of the rights of the child, researching situation of children and vulnerable groups of children, etc.

The Centre has produced over 50 publications independently or in cooperation with other organisations. The Child Rights Centre's priorities are to strengthen the efforts in the implementation of the Convention on the Rights of the Child, inform the public on the situation of child rights in our country and their promotion and disseminate the notion on child rights through direct work with professionals

## **Researcher**

### ***M.A. Milena Banić***

Milena Banić is consultant, trainer and program coordinator of the Child Rights Centre from 2007. During her time with Child Rights Centre, she has been dealing in particular with juvenile justice, child rights, child trafficking and child abuse and participating in many research projects. Also, Milena has been working as a human rights lawyer from 2005 and representing vulnerable and marginalized groups, victims of domestic violence, human trafficking and CAN children before domestic and international courts. She is the author and co-author of many published articles, expert analysis and manuals. Milena Banić got the M.A. in Child Rights in 2008 at the Law School of the UNION University in Belgrade with the master thesis: "Child abuse and neglect" but also M.A. in European Integration at the Law School University of Belgrade with master thesis "Strategic litigation of the human rights in cases of discrimination" in 2012. As a scholarship student at the PILnet Institute in New York, in the field of human rights, Milena trained human rights advocacy at the Columbia University and did internships in two organizations in the city of New York – at "The Institute for Justice – VERA" and at the organization "Legal Aid Society".

## **Supervision**

### ***PhD Ivana Stevanović***

In the 22 years' period of research and NGO works Ivana Stevanović, Child Rights Centre president, has been dealing, particular, with juvenile offending, child rights, child trafficking, child abuse, women's crime, refugees and victimization. In the past 22 years she has participated in numerous research projects, and the results of them were presented on the scientific meetings and congresses, as well as in scientific articles, which were published. Ivana Stevanovic got the M.A. and PhD degrees at School of law University of Belgrade with master's thesis "Special Proceedings against Juveniles and Its Specific Characteristics" in 1998 and PhD's thesis "Criminal legal protection of minors" in 2008. She has the experience in producing legal analysis, in working with State institutions, in the development of Model Strategies/Protocols/Standardised Procedures and especially she has knowledge of the UN Convention on the Rights of the Child and the Optional Protocol with UN CRC and Relevant International Standards in area of Juvenile Justice.

### 1.3. Methodology

The main objective of present national report is to provide an overview of the different categories of places where children may be deprived of their liberty especially in the field of Serbian Juvenile Justice System.

The report intention is to present how the respect of children's rights within these places is monitored and how children can enforce their rights in case of violation. The national research has attempted to assess the existence, efficiency and utility of both monitoring mechanisms of the conditions of children deprived of personal liberty and the complaint mechanisms available to them in the different types of facilities present in Serbia within the Juvenile Justice System.

Methodology used in designing this Report was mostly based on desk research that involved gathering and analysing of information and data relevant for the analysed subject. Gathering of data involved the following methods: overview and analysis of international policies and standards, overview and analysis of the contents of the relevant legislative framework, existing literature, reports, policies and statistical data combined with a field research based on individual interviews with professionals and juveniles. Field research is implemented with financial support of International Management Group (IMG) who recognised importance of this project. The interviews were conducted following a common questionnaire as a guideline. However the questionnaire has been adapted in order to properly respond to the national requirements.

### 1.4. Limitations

This report is limited in available timeframe and economic resources. The report is mainly based on the analysis of the relevant legislative framework, existing literature, reports, policies and available statistical data. These resources are combined with a field research based on individual interviews with professionals and juveniles in order to review the implementation of the legislative solutions in practice. Due to the limited time for the realization of this report and limitation in financial resources, the interviews in the facilities for the enforcement of criminal sanctions were conducted in two institutions – the Juvenile Correctional Home in Kruševac which implements the educational measure of remand to juvenile educational home and the Juvenile Penitentiary in Valjevo which runs a juvenile detention centre, while, due to the impossibility of obtaining permission within the stipulated time for realization of the interviews in the Special Prison Hospital in Belgrade District Prison where security measures are implemented, the analysis regarding the implementation of these measures was based on the interviews with the relevant key actors outside this institution.

The report is limited in terms of the scope of the research. It includes the places of deprivation of liberty within the juvenile justice system in Serbia in accordance with the agreement with the project partners due to its specific status of associated partner, and having in mind the limited resources and time to complete this report. Also, this Report includes only analysis of national framework in line with agreement with project coordinator.

## 2. The national framework

### 2.1 Legal and regulatory framework for children deprivation of liberty at a national level in Serbia

The Republic of Serbia is a signatory state to many documents on human rights and children rights. Serbia ratified the Convention on the Rights of the Child in 1990. Optional Protocol on the involvement of children in armed conflict and Optional Protocol on the sale of children, child prostitution and child pornography were ratified in 2002. Republic of Serbia is a signatory state to the Third Optional protocol on the communication procedure. Serbia is a State party to all the most important treaties concerning prohibition i.e. prevention of torture. International Covenant on Civil and Political Rights<sup>1</sup>, which in its Article 7 adopts a provision regarding prohibition of torture from the Article 5 of the Universal Declaration of Human Rights<sup>2</sup>, was ratified in 1971<sup>3</sup>. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) was ratified in 1991<sup>4</sup>. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been signed on 25 September 2003, and ratified on 1 September 2005 by the Republic of Serbia<sup>5</sup>. By the Law on amending the Law on Ratification of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Serbia, adopted in 28<sup>th</sup> July 2011 it has been determined that the Ombudsman of the Republic of Serbia shall operate the National Preventive Mechanism against Torture.<sup>6</sup>

Serbia is Member State of the Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>7</sup> and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>8</sup> (European Convention for the Prevention of Torture) were ratified in 2003<sup>9</sup>. European Convention for the Prevention of Torture establishes a European Committee for the Prevention of Torture<sup>10</sup>.

In recent years, the Republic of Serbia has taken major steps to harmonize national legislation and to provide implementation of the rights on the children deprived of the liberty according to ratified conventions and also international standards incorporated in the UN Standard Minimum Rules for the Administration of Juvenile Justice from 1985 (The Beijing Rules), the and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and CPT standards.

The Constitution of the Republic of Serbia<sup>11</sup> guarantees human dignity, the sanctity of life and inviolability of physical and mental integrity, and explicitly prohibits illtreatment. The Constitution of the Republic of

<sup>1</sup> Signed on 19th December 1966 in New York.

<sup>2</sup> Adopted by the United Nations General Assembly on 10th December 1948 in Paris

<sup>3</sup> „Official Gazette of the Socialist Federal Republic of Yugoslavia„ No. 7/71

<sup>4</sup> „Official Gazette of the Federal Republic of Yugoslavia – International treaties„, No. 9/91

<sup>5</sup> „Official Gazette of Serbia and Montenegro – International treaties“, No. 16/2005, modifications 2/2006

<sup>6</sup> Article 2a of the Law on amending the Law on Ratification of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Serbia

<sup>7</sup> Opened for signature on 4 November 1950 in Rome

<sup>8</sup> Signed on 26 November 1987 in Strasbourg

<sup>9</sup> „Official Gazette of Serbia and Montenegro – International treaties“, No. 9/2003, 5/2005 and 7/2005 – modified and Official Gazette of Serbia and Montenegro – International treaties, No. 9/2003)

<sup>10</sup> European Convention for the Prevention of Torture, Article 1

<sup>11</sup> Official Gazette of the Republic of Serbia“, No.98/200

Serbia, Article 25 Paragraph 2 regulates that nobody can be subjected to torture, inhuman or degrading treatment or punishment. Prohibition of torture is foreseen by other legal regulation, among others by the Criminal Procedure Code<sup>12</sup>, Law on Police<sup>13</sup> and Law on Execution of Criminal Sanctions<sup>14</sup>. Criminal Code<sup>15</sup> determinates torture and illtreatment as a separate offense.

The Law on the Execution of Criminal Sanctions was enacted on January 1, 2006. The Law provides better solutions and guarantees when it comes to the protection of prisoners' human rights, precisely defines the purpose of detention and corresponds to modern penological thought and standards of restorative justice. A section of the Law generally regulates the status of prisoners and guarantees the respect for prisoners' dignity, protection of their fundamental rights in keeping with the Constitution and the tenets of international law, and ban torture and any form of discrimination. This section also provides legal procedure for individual cases related to prisoners' rights and duties throughout their confinement. The Law lays down that the functioning of the Central Prison Administration and the entire penal system shall be open to public scrutiny and, in this context, domestic and international organizations and agencies concerned with human rights, the media and experts shall be entitled to visit the institutions accommodating the persons deprived of their liberty. The Law figures as the first regulation of the type that provides court protection against the decisions on disciplinary punishment and prisoners' right to legal aid in disciplinary proceedings.<sup>16</sup> The new Law on Execution of Criminal Sanctions<sup>17</sup>, which was adopted recently and soon comes into force, a new institution has been established – judge executive responsible for protecting the rights of persons serving criminal sanctions, as well as detainees.<sup>18</sup>

Law on Juvenile Justice (Law on juvenile criminal offenders and criminal protection of juveniles)<sup>19</sup> establishes legal framework for imposition criminal sanctions to juveniles in conflict with law. The Law was enacted in 2005 and it is based on concept of restorative justice and alternative sanctions.

The Law on Juvenile Justice proscribes criminal responsibility for juveniles who at the time of commission of the crime have attained 14 years of age and excludes enforcement of criminal sanctions as well as initiation of criminal proceedings against children, i.e. persons who have not yet attained 14 years of age. The Law makes a distinction between younger juvenile (person who at the time of commission of the criminal offense has attained 14 and is under 16 years of age) and elder juvenile (person who at the time of commission of the criminal offense has attained 16 and is under 18 years of age).

The Law specifies different types of criminal sanctions that may be pronounced to juvenile offenders, namely: educational measures, juvenile detention and security measures.

With regard to educational measures, the Law includes open protection measures<sup>20</sup> and close protection measures – institutional measures. Close protection measures are: remand to rehabilitation institution, remand to juvenile correctional home, committal to special institution for treatment and acquiring of social skills.

<sup>12</sup> „Official Gazette of the Republic of Serbia” No. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14)

<sup>13</sup> „Official Gazette of the Republic of Serbia „, No. 101/2005, 63/2009 - Constitutional Court's decision and 92/2011

<sup>14</sup> „Official Gazette of the Republic of Serbia „, No. 85/2005, 72/2009 and 31/2011

<sup>15</sup> „Official Gazette of the Republic of Serbia „, No. 85/2005, 88/2005 - modification 107/2005 - modification 72/2009, 111/2009 and 121/2012

<sup>16</sup> Helsinki Comitee fo Human Rights in Serbia: Prisons in Serbia April 2006-April 2006, Belgrade, 2006.

<sup>17</sup> RS Official Gazette No. 55/2014

<sup>18</sup> Article 33-37 Law on Execution of Criminal Sanctions

<sup>19</sup> Official Gazette of the Republic of Serbia No. 85/05

<sup>20</sup> Open protection measures are: 1. Warning and guidance: court admonition and alternative sanctioning 2. Measure of increased supervision: increased supervision by parents, adoptive parent or guardian, increased supervision in foster family, increased supervision by guardianship authority, increased supervision with daily attendance in relevant rehabilitation and educational institution for juveniles.

The Court shall order remand to an educational institution when juvenile needs to be separated from the current environment and assistance and permanent supervision by qualified personnel have to be provided. The juvenile is remanded to an educational institution for a minimum of six months and maximum of two years, and every six months the Court shall reconsider whether grounds for suspension of enforcement of this measure or its substitution with another educational measure exist<sup>21</sup>.

The Court shall order remand of a juvenile to a correctional home when, in addition to separation from current environment, increased supervision measures and specialised professional educational programs have to be applied. The juvenile shall remain in the correctional home for the minimum of six months and maximum of four years, and every six months the Court shall reconsider whether grounds for suspension of enforcement of this measure or its substitution with another educational measure exist<sup>22</sup>.

Instead of remand to an educational institution or juvenile correctional home, the Court may commit a juvenile with physical or mental disability to a special institution for medical treatment and acquiring of social skills. This measure is pronounced instead of mandatory psychiatric treatment and confinement in a health institution (Article 81 of the Criminal Code), if confinement and treatment of a juvenile may be provided in a special institution for medical treatment and acquiring of social skills and thus achieve the purpose of this security measure. This measure, although proscribed by the 2005 Law, has not yet been carried out in the practice of the Republic of Serbia because of the lack of facilities for the implementation of these measures.

The juvenile may remain in the institution for treatment and acquiring of social skills for a maximum of three years, and the Court shall reconsider the grounds for suspension of this measure or its substitution by another measure every six months. If this measure is ordered instead of a security measure, the juvenile shall remain in the institution as long as necessary, and upon reaching twenty one years of age enforcement of the measure shall continue in an institution carrying out the enforcement of the security measure of mandatory treatment and confinement in a medical institution<sup>23</sup>.

An elder juvenile (16-18 years of age) who committed a criminal offense punishable by imprisonment of over five years may be sentenced to juvenile prison if due to high degree of guilt an educational measure would not be appropriate. Juvenile detention may last from 6 months to five years, and juvenile detention of up to ten years may be pronounced for criminal offenses carrying a statutory punishment of twenty years imprisonment or more severe punishment or in case of joinder of at least two criminal offenses punishable by more than ten years imprisonment<sup>24</sup>.

Security measures<sup>25</sup> may be ordered to juveniles if they are sentenced to educational measure or juvenile detention. The purpose of security measure is to eliminate circumstances or conditions that may have influence on an offender to commit criminal offenses in the future. With regard to the issue of children deprived of their liberty this paper particularly examines three security measures that may be imposed to

<sup>21</sup> Article 20 Law on Juvenile Justice

<sup>22</sup> Article 21 Law on Juvenile Justice

<sup>23</sup> Article 23 Law on Juvenile Justice

<sup>24</sup> Articles 28-30 Law on Juvenile Justice



juveniles, as follows: 1) compulsory psychiatric treatment and confinement in a medical institution; 2) compulsory drug addiction treatment; 3) compulsory alcohol addiction treatment. The court shall order compulsory psychiatric treatment and confinement in a medical institution to a juvenile who committed a criminal offense in a state of substantially impaired mental capacity if, due to the committed offense and the state of mental disturbance, it determines that there is a risk that the offender may commit a more serious criminal offense and that in order to eliminate this risk they require medical treatment in such institution. The court shall order compulsory drug addiction treatment or compulsory alcohol addiction treatment to a juvenile who has committed a criminal offense due to addiction to narcotics or alcohol and if there is a serious danger that he may continue committing criminal offenses due to this addiction<sup>26</sup>.

Law on Juvenile Justice also regulates the measures of deprivation of liberty during criminal proceedings. Exceptionally, the Juvenile judge may remand the juvenile to detention when grounds exist specified by law<sup>27</sup>. Detention in preparatory proceeding on grounds of the detention order issued by the Juvenile judge may not exceed one month, and the juvenile Court bench of the same Court may, on justifiable grounds, extend detention for maximum one more month. Following conclusion of preparatory proceeding and from the moment of filing a motion for pronouncing of criminal sanction, detention of an elder juvenile may not exceed six months, and four months for a younger juvenile. From the moment of ordering an educational measure of remand to a juvenile correctional home, and pronouncing a juvenile prison sentence, detention of a juvenile may not exceed six months. Based on the legislation of the Republic of Serbia, the police has no ability to determine the extent of detention for juveniles. Also, during the arrest of the juveniles, the police has obligation to deliver to the juveniles a special guideline about their rights written in child-friendly language which is developed with support of the Child Rights Center and DX Group of children.

The most relevant legislation regarding children deprived of liberty and detained in medical institutions are the Law on Protection of Persons with Mental Disabilities<sup>28</sup>, the Law on Protection of Patients' Rights<sup>29</sup> and the basic sectoral laws such as the Healthcare Law and the Health Insurance Act.

Law on Protection of Persons with Mental Disabilities regulates the basic principles, organization and implementation of mental health care, methods and procedures, organization and conditions of treatment and committal without the consent of the person with mental disabilities in stationary and other medical institutions. This Law stipulates that the treatment of persons with mental disabilities is administered in primary health care whenever possible and in psychiatric institutions only when it is the only or the best way to provide appropriate medical treatment.<sup>30</sup> Juvenile may be placed in a psychiatric institution only with the written consent of the legal representative. In case the psychiatrist believes that the legal representative does not act in the best interest of the child, person with mental disabilities or person deprived of legal capacity, the psychiatric institution is obliged to inform the guardianship authority on this matter without delay<sup>31</sup>. The Law strictly forbids electroconvulsive treatment of juveniles<sup>32</sup> and provides that physical restraint and isolation of person with mental disabilities placed in a psychiatric institution may be implemented only in exceptional cases, when it is the only means to prevent that person's

<sup>26</sup> Articles 80-84 Criminal Code

<sup>27</sup> Article 66 Law on Juvenile Justice

<sup>28</sup> Official Gazette of the Republic of Serbia "No. 45/13"

<sup>29</sup> Official Gazette of the Republic of Serbia "No. 45/13"

<sup>30</sup> Article 13 Law on Protection of Persons with Mental Disabilities

<sup>31</sup> Article 20 Law on Protection of Persons with Mental Disabilities

<sup>32</sup> Article 55 Law on Protection of Persons with Mental Disabilities

behaviour from seriously endangering their own life and safety or life and safety of other persons with prior warning and only to the extent and in the manner absolutely necessary to eliminate the danger caused by actions of person with mental disabilities.<sup>33</sup> The decision on the implementation of physical restraint and isolation of persons with mental disabilities and supervision over its application is performed by a psychiatrist.<sup>34</sup>

Law on Protection of Patients' Rights regulates patients' rights in use of health care, the way to exercise and the way to protect these rights, as well as other issues regarding patients' rights and responsibilities. This Law provides a mechanism of protection of patients' rights and establishes the Patient Advisor as the authority responsible for the submission of patients' complaints regarding violations of their rights.<sup>35</sup>

Law on Social Protection<sup>36</sup> regulates the activity of social protection and contains a number of provisions governing the supervision of the work of the institutions of social protection and inspection of the performance of the social protection activities and in that sense is relevant for children deprived of liberty who have been ordered educational measure of remand to an educational institution, and which is employed in the institutions of social protection in the Republic of Serbia, more precisely in the juvenile educational institutions, as well as for children asylum seekers who are placed in the institutions for juvenile aliens.

Law on Asylum prescribes the principles<sup>37</sup>, conditions and procedure for the granting and cessation of asylum, as well as the status, rights and obligations of asylum seekers and persons granted the right to asylum in the Republic of Serbia and as such is legally relevant for children in asylums in the Republic of Serbia.

Considering that by the Law on amending the Law on Ratification of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Serbia it has been determined that the Ombudsman of the Republic of Serbia shall operate the National Preventive Mechanism against Torture, the Law on the Protector of Citizens is also legally relevant<sup>38</sup>; this Law establishes the Protector of Citizens (Ombudsman) as an independent body that shall protect the rights of citizens and control the work of government agencies, the body authorized for legal protection of property rights and interests of the Republic of Serbia and other bodies and organizations, enterprises and institutions which have been delegated public authority and proscribes the method of working of this body. The Law on the Protector of Citizens regulates the proceedings before this body and especially the procedure of filing a complaint by a physical or legal person who considers that their rights have been violated by an act, action or failure to act of an administrative authority<sup>39</sup>.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has already twice implemented the programmes of periodic visits to Serbia in 2007 and 2011. When it comes to children deprived of liberty in the field of juvenile justice system, the CPT's delegation has during their visit in 2007 visited police stations in the Belgrade District Prison and made recommendations regarding the improvement of juveniles' rights in the pre-trial proceedings, as well as

<sup>33</sup> Article 46 and 47 Law on Protection of Persons with Mental Disabilities

<sup>34</sup> Article 49 Law on Protection of Persons with Mental Disabilities

<sup>35</sup> Article 39 Law on Protection of Patients' Rights

<sup>36</sup> „Official Gazette of the Republic of Serbia” No. 24/11”

<sup>37</sup> „Official Gazette of the Republic of Serbia” No. 109/07”

<sup>38</sup> „Official Gazette of the Republic of Serbia” No. 79/05 i 54/07”

<sup>39</sup> Article 25 Law on Protector of Citizens

during the time they spend in detention centres<sup>40</sup>. The improvement of conditions in detention centres has also been recommended to Serbia by the Universal Periodical Review<sup>41</sup> mechanism, while the Committee on the Rights of the Child has in their Concluding Observation recommended to Serbia to develop alternatives to detention in order to reduce detention of juveniles in prisons in Serbia to a minimum<sup>42</sup>. However, during this visit the CPT's delegation has not visited any institutions for the enforcement of educational measures or juvenile prison sentence.

During the visit in 2011, the CPT's delegation had, besides visits to police stations and detention centres, also visited the Juvenile Penitentiary in Požarevac which runs juvenile detention for juvenile women, as well as the Juvenile Educational Institution in Niš which implements the educational measure of remand to educational institution. At the time of their visit to the Juvenile Penitentiary in Požarevac, there were no persons in the execution of juvenile detention. In relation to their visit to the Juvenile Educational Institution in Niš, CPT's delegation has suggested a number of different recommendations for the improvement of juveniles' rights in this institution. Particularly, the delegation recommended that the Serbian authorities ensure regular visits to this institution by bodies that are independent of the Ministry of Labour, Employment and Social Policy, i.e. the Ministry responsible for the work of this institution as an institution from the social protection system. Also, the CPT's delegation has recommended the improvement of the system of informing juveniles about their rights and obligations<sup>43</sup>.

## 2.2. Mapping of detention facilities for children<sup>44</sup>

In the Republic of Serbia there are different types of institutions accommodating children deprived of liberty, especially in the field of juvenile justice system, which enforce the educational measures, juvenile prison sentence and security measures ordered to juveniles.

There are three educational institutions on the territory of the Republic of Serbia which can accommodate juveniles who have been sentenced to educational measure of remand to educational institution in the

<sup>40</sup> Council of Europe: Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf (2009) 1

<sup>41</sup> Office for the High Commissioner for Human Rights: Universal Periodical Review Serbia A/HRC/WG.6/15/SRB/3

<sup>42</sup> Committee on the Rights of the Child: Concluding Observation Republic of Serbia, CRC/C/SRB/CO/1, Para 73

<sup>43</sup> Council of Europe: Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf (2012) 17

<sup>44</sup> Mapping of institutions includes institutions with children deprived of liberty which are relevant within the juvenile justice system. Within the system of social protection, in addition to the juvenile educational institutions in Niš, Belgrade and Knjaževac, which implement the measure of remand to educational institution, it is also important to mention the Children's Shelter in Belgrade, the social protection institution for the care of the most vulnerable groups of young people aged 7-18, including victims of violence, abuse and neglect, street children and other vulnerable groups of children, and which is situated within the building of the Belgrade Juvenile Educational Institution. This institution, although it should not be an institution for children deprived of liberty, still inhibits the freedom of children, considering that the space where the institution is located is inadequate, there are bars on every window, the institution is locked and the children in the institution have a limited freedom of movement. Mapping of institutions includes only medical institutions relevant for the implementation of security measures of mandatory psychiatric treatment and confinement in a health care institution, compulsory alcohol addiction treatment and compulsory drug addiction treatment. In addition to these institutions there are psychiatric institutions for treatment of persons with mental disabilities in the jurisdiction of the Ministry of Health of the Republic of Serbia as well as regular hospitals / clinics for neuropsychiatric diseases and addictions, Special Hospital for Psychiatric Illness "Slavoljub Bakalović" in Vršac, Special Hospital "Sveti Vračevi" in Novi Kneževac, Department for Psychiatric Illness "Dr Laza Lazarević" in Belgrade, the Institute for Mental Health in Belgrade etc. There are also institutions for accommodation of juvenile aliens within the Juvenile Educational Institutions in Niš and Belgrade, as well as within the asylum in Banja Koviljaca nad other institutions.

criminal proceedings. These institutions are in the jurisdiction of the Ministry of Labour, Employment and Social Policy, and they are the following: Juvenile Educational Institution in Belgrade, Juvenile Educational Institution in Niš, and Juvenile Educational Institution in Knjaževac. During 2012, in the Republic of Serbia the number of ordered measures of remand to educational institution was 73, while in 2013 the number of ordered measures was 79.<sup>45</sup> The total number of users of the juvenile educational institution in 2012 amounted to 118 young people. As to the gender structure, male juveniles are predominant, and they make 82.2% of users<sup>46</sup>. Within the Juvenile Educational Institutions in Belgrade and Niš, there is a Centre for Accommodation of Juvenile Aliens Unaccompanied by Parents. During 2012, 119 juvenile aliens unaccompanied by parent or guardian were accommodated within these two institutions.<sup>47</sup>

The Juvenile Correctional Home is situated in Kruševac and this facility accommodates juveniles who have in the juvenile criminal proceedings been sentenced to educational measure of remand to a juvenile correctional home. This institution is in the jurisdiction of the Ministry of Justice of the Republic of Serbia. The institution is organized into several parts and forms of treatment – closed, semi-open and open department. The institution has the capacity to receive and accommodate about 400 juveniles. The average number of juveniles in this institution is 105. Although intended for minors, the vast majority of the population in the Educational- Correctional Institution in Kruševac are the persons of age<sup>48</sup> (by two thirds) with a court sentence for a crime they had committed as minors. However, their stay at this institution poses a serious challenge both for the management and for those minors who are referred to the institution for minor offenses. All of this leads to the creation of serious informal groups.<sup>49</sup> According to the latest data provided by the Institution for execution of criminal sanctions, on 31 December 2012 the total number of persons serving educational measures in the Juvenile Correctional Home in Kruševac amounted to 210 persons, of which 140 persons were of age at the time, while 50 of them minors (46 males and 4 females).<sup>50</sup> The total number of persons serving educational measure in the Juvenile Correctional Home in Kruševac in 2013 was 220, while this facility currently accommodates 231 persons.

The Juvenile Penitentiary in Valjevo (juvenile prison) is a facility specialized in enforcement of juvenile prison sentence. This facility is in the jurisdiction of the Ministry of Justice of the Republic of Serbia. The institution has the capacity of 250 persons, and on average this facility accommodates 160 convicts and 20 detainees. This facility accommodates juvenile males. According to the latest data provided by the Institution for execution of criminal sanctions, on 31 December 2012 the total number of persons serving juvenile prison sentence in the Juvenile Penitentiary in Valjevo amounted to 40, of which 11 persons were admitted during 2012, while 29 persons were already serving juvenile detention in the mentioned institution<sup>51</sup>. In 2013, this facility accommodated 20 persons serving juvenile prison sentence. Juvenile females who have been sentenced to juvenile detention are placed in the Penitentiary for Women in Požarevac, as the only institution for the enforcement of criminal sanctions in the Republic of Serbia for the remand of women sentenced to prison. At this moment, there are no persons serving juvenile detention in this facility.

<sup>45</sup> Republic Institution for Social Welfare: „Children in the Social Welfare System“, Belgrade, 2013, page 42

<sup>46</sup> Republic Institution for Social Welfare: „Synthesis Report on the Work of Institutions for Accommodation of Children and Young People in Serbia for 2012“, pages 39-40.

<sup>47</sup> Ibid.

<sup>48</sup> Young adults over 18 years old who have committed crimes as minors.

<sup>49</sup> Helsinki Comitee For Human Rights in Serbia: “Monitoring of the Prison System Reform, Prison System in Serbia 2011”, Belgrade, 2011

<sup>50</sup> Ministry of Justice of the Republic of Serbia, Directorate for the Execution of Criminal Sanctions: “Annual Report on the work of the Directorate for the Execution of Criminal Sanctions for 2012”, Belgrade, 2013, page 97

<sup>51</sup> Ministry of Justice of the Republic of Serbia, Directorate for the Execution of Criminal Sanctions: “Annual Report on the work of the Directorate for the Execution of Criminal Sanctions for 2012”, Belgrade, 2013, page 97

According to the statistics of the Ministry of Justice of the Republic of Serbia, Directorate for the Execution of Criminal Sanctions, published on the official website of this institution, there are currently 168 juveniles serving educational measure, and 35 juveniles serving juvenile detention<sup>52</sup>.

Juvenile detention is implemented in the detention units. Detentions units are organised within the district prisons and penitentiary units in Serbia (26 of units). Conditions in these facilities are not adapted to the juveniles and therefore are not in accordance with international standards either. During detention, psycho-social and educative support is not available for the juveniles so stay in custody is considered as the most risky period for the juveniles. This problem is recognized by the legislators and new amendments of the Law on Juvenile Justice will include solutions of these issues.

Security measures of mandatory psychiatric treatment and confinement in a health care institution, compulsory alcohol addiction treatment and compulsory drug addiction treatment ordered to juveniles are executed in the Special Prison Hospital in Belgrade District Prison.

## 2.3. National monitoring mechanisms / bodies / persons who carry out visits

### 2.3.1. National preventive mechanism (NPM) under OPCAT

By the Law on Ratification of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Serbia a National Preventive Mechanism against Torture has been established which is responsible to perform continuous monitoring in all facilities where there are persons deprived of liberty, above all police stations, prisons and juvenile correctional homes, stationary social protection institutions, psychiatric hospitals, asylums, and with an objective to prevent torture and other cruel, inhuman or degrading treatment or punishment. The National Preventive Mechanism against Torture is responsible for monitoring all institutions in Serbia where there are children deprived of liberty. Under the Law amending the Law on the Ratification of the Optional Protocol, adopted on 28 July 2011 at the sitting of the Republic of Serbia National Assembly, **the Protector of Citizens** was designated as the authority performing the duties of the NPM. The Law on the Protector of Citizens<sup>53</sup> 2 lays down that the Protector of Citizens is independent<sup>54</sup>, autonomous in performing its duties, a state body which safeguards and looks after promotion of citizens' rights and controls the legality and regularity of the work (performed) by bodies of government administration, the body in charge of legal protection of property rights and interests of the Republic of Serbia as well as of other bodies and organizations, enterprises and institutions entrusted with the exercise of public powers. The Protector of Citizens initiates the procedure for control of the legality and regularity of the activities of the administrative bodies upon a complaint from citizens or on its own initiative. Any natural or juridical person, be it domestic or foreign, holding the view that by any act of an administrative body, its action or

<sup>52</sup> Statistics of the Directorate for the Execution of Criminal Sanctions, <http://www.uiks.mpravde.gov.rs/lt/articles/statistika/>

<sup>53</sup> Law on the Protector of Citizens ("Official Gazette of RS", Nos. 79/2005 and 54/2007)

<sup>54</sup> Article 2 of the Law on Protector of Citizens states that "The Ombudsman is an independent and autonomous in the performance of work under this law, and no one has the right to influence his work and actions". The Ombudsman has been elected by the National Assembly of Republic of Serbia by majority of votes of all deputies, after recommendation of Committee for Constitutional Affairs. The Ombudsman reports to the National Assembly.



through its omission to act their rights have been infringed upon, may submit a complaint to the Protector of Citizens.

The Model of the NPM in the Republic of Serbia is defined by the relevant law. It stipulates that the Protector of Citizens shall carry out the duties of the NPM in collaboration with the Ombudsmen of the autonomous provinces and the associations whose statute intended goal is the promotion and protection of human rights and freedoms<sup>55</sup>. Principles of functioning of the Preventive Mechanism are set out by the Protector of Citizens' Decision on Establishment of Preventive Mechanism, as well as by other generally accepted monitoring principles: do no harm, act strictly according to the law, respect management and personnel of the institution, adhere to the house rules of the institution and comply with internal rules, respect established competences and internal job assignments in the institution, do not become involved in existing interpersonal conflicts in institution, treat all contacted persons in a polite manner, demonstrate respectful attitude towards the institution that one presents, act in accordance with the set goal of visit following the determined method of work, respect the hierarchy and special assignments of the monitoring team members, act in coordination with other monitoring team members, demonstrate professional behaviour, do not deal with circumstances that are outside the competence, respect interlocutor's integrity, avoid any partiality, draw attention to the confidentiality of interview, show empathy for suffering that our interlocutor refers to, do not create unrealistic expectations for the interlocutor, take care of safety of the source of information, do not take photographs of any person without his/her consent, carry out investigation procedure with several sources, ask the interlocutors clear and precise questions, establish reliable, clear, precise and comparative facts etc.

Preventive Mechanism is entitled to: 1. Unimpeded and unannounced visits to institutions; 2. Unrestricted access to all institutional premises; 3. Unrestricted and unsupervised interview with all persons deprived of liberty; 4. Unrestricted and unsupervised interview with the personnel; 5. Unrestricted access to all records, regardless of degree of confidentiality; 6. Unrestricted copying of documentation, regardless of degree of confidentiality. Main goals of visits to institutions are: 1. Determining the real situation (establishing reliable, clear, precise and comparative facts suitable for analysis); 2. Identifying irregularities in work that is, identifying violations of rights of persons deprived of liberty; 3. Recommending measures for elimination of work irregularities; 4. Control of the change of situation and implementation of measures for elimination of work irregularities.

Monitoring places of detention of persons deprived of liberty includes continuous and systematic gathering, checking and processing of data, as well as determining the situation in institutions concerning respect of rights of persons deprived of liberty and with regard to that recommending adequate measures. Monitoring places of detention of persons deprived of liberty is first of all conducted by visiting those institutions, as well as by collecting information on the status of persons deprived of liberty in those institutions in any other way, particularly from: the reports of these institutions (e.g. filled-in questionnaires); findings of other subjects that conducted monitoring of these institutions; other activities of the Protector of Citizens; media etc.

The organizational unit NPM is administered by the Deputy Protector of Citizens in charge of protection of the rights of PDLs. While it has the same administrator, this pro-active unit is totally functionally separate

<sup>55</sup> Law on Ratification of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Serbia a National Preventive Mechanism against Torture.

from the existing Department for the Protection of the Rights of PDLs, which plays a re-active role. The Staffing Scheme has been drafted envisaging four (4) new job positions: a mid-level adviser, an adviser and two junior advisers. For the time being, pending the adoption of the Staffing Scheme, one mid-level male adviser and two younger female advisers are employed under fixed-term contracts. This shows that the gender balance principle has been complied with. Of the mentioned employees there are two lawyers and one employee is a teacher of special education, which is how a balance in terms of different fields of professional expertise has been achieved, as stipulated under Article 18 of the OPCAT.

In order to perform efficiently the duties of the NPM on the national level the Protector of Citizens reached agreement with the **Commission for the Control of Enforcement of Penal Sanctions**, appointed in July 2011 under a decision of the Republic of Serbia National Assembly, on a number of joint activities. The Commission's goal is to carry out control of enforcement of penal sanctions and detention measures; to take stock of the situation in the field of enforcement of penal sanctions; and to propose measures to eliminate irregularities and measures to improve life, treatment and protection of PDLs. Also, the Protector of Citizens announced on 29 December 2011 in the "Official Gazette of the Republic of Serbia" and on the website of the Protector of Citizens a Public Call for selection of the associations with which it would cooperate in executing the tasks of the NPM. On 20 January 2012 the Protector of Citizens' Commission for Selection of Associations under the Public Call for cooperation in performing the NPM duties was in session. The session made an expert evaluation of the applications received. The Commission recommended to the Protector of Citizens to establish cooperation in performing the duties of the NPM with all the associations that had submitted applications, because all the applicant associations complied with all the requirements envisaged under the Public Call. However, it also recommended that particular associations<sup>56</sup> should systematically monitor the status of PDLs and presence of torture: at police stations - Belgrade Center for Human Rights; in prisons - Helsinki Human Rights Committee in Serbia; at stationary-type social welfare institutions – MDRI-S; in mental hospitals – IAN; the position of minors in prisons and detention units - Dialogue and the Committee for Human Rights – Valjevo; the position of women in total institutions – the Victimology Society of Serbia. The decision was forwarded to all the applicants under the Public Call and it was made public via the Protector of Citizens' website.

In the process of preparation of monitoring of places of detention of persons deprived of liberty, the first step is to identify the priority visits according to the type of institutions and their situations and on the basis of the findings prepare the plan of visits to institutions (hereinafter: Plan of visit). The following types of visits exist: regular, control and emergency. Regular visits are periodic visits carried out with the view of systematic control of situation in institutions in relation to the respect of rights of persons deprived of liberty. Regular visits are planned ahead and carried out according to the designed plan of visit. Regular visits are announced. Control visits are those carried out in order to check the situation in institutions in relation to the respect of persons deprived of liberty and compare it to the situation identified in the course of previous visit. Control visit are planned ahead and carried out according to the designed plan of visit. Control visits are, as a rule, announced. Emergency visits are visits carried out in case of learning of the existence of serious irregularities related to the respect of rights of persons deprived of liberty. A decision to carry out an emergency visit is made by the coordinator. Emergency visits are not foreseen by the plan of visit. Emergency visits are, as a rule, unannounced.

<sup>56</sup> It is worth mentioning that there is no particular association determined by NPM, but there are few NGOs which are very active in this field such as: Belgrade Centre for Human Rights, Group 484, Praxis, etc.

The plan of visits to be undertaken by NPM in 2012 was adopted. The Program of visits was drawn up in accordance with agreement reached by The Protector of Citizens, Provincial Ombudsman and selected associations in charge of conducting systematic monitoring of conditions of PDLs, in their special areas of expertise. The intention is to undertake visits to all institutions where people deprived of their liberty are accommodated within the next four years, which consequently means that NPM shall conduct about 80 visits in 2012 alone, 50 of which are to be undertaken to the Police stations, 10 to prisons, 5 to psychiatric hospitals, 6 to social welfare institutions of residential type, one to a shelter for foreigners and 10 to nursing homes for the elderly.

The Methodology of the visits to be undertaken by NPM to institutions providing accommodation to persons deprived of their liberty has been drafted and is to be based on previously adopted Preventative mechanism of the Protector of Citizens' methodology for monitoring of institutions where PDLs are held. Visits are carried out according to previously established phases. First phase foresees an interview with the management of the institution, and second phase a joint visit of the institution. During the third phase, the team is divided into groups for specific areas, most commonly into group for general legal affairs, group for treatment, group for health care, when interviews with heads of relevant organizational units are held and the documentation reviewed. During the fourth phase, interviews with PDLs are conducted, and in the fifth phase, after the short meeting of all groups, the final interview with the management of institution is carried out, in which a preliminary impression concerning the situation in the institution is identified. Acting upon established phases is not mandatory; it depends on the type of visit and other circumstances. NPM Methodology defines the following types of visits: regular visits, follow-up (control) visits, thematic visits and extraordinary (ad hoc) visits. Visits may be announced or unannounced. Questionnaires used and filled-out by the team members during the visits are drawn-up for the purpose of more efficient and systematic work performance. Reports are made according to previously defined format, but they can be structured differently depending on the type of visit and other circumstances. The questionnaires are adapted to the report structure, so that once filled-out; they can be easily incorporated in the main report on the visit. In the reports on visits to the institutions where PDLs are placed, NPM identifies deficiencies and issues recommendations in order to eliminate identified irregularity which could lead or lead to torture or ill-treatment. Once the deficiencies is identified or certain irregularity in work, relevant regulations and standards are referenced in the recommendation issued with which it is necessary to bring into line the actual state or conduct. Reports are delivered to visited institution and competent ministry, along with the invitation to a meeting during which the report is to be considered and reviewed. Subsequent to delivery of the report, NPM engages in permanent, continuous dialogue with the visited institution and competent ministry, in order to mutually analyze and examine current situation in the particular institution, as well as in the system as a whole.

For the purpose of evaluating the existing methodologies for conducting prison visits, the Protector of Citizens carried out a test visit to pavilion VII located at Penal Correctional Institutions in Pozarevac – Zabela<sup>57</sup>.

The "Preventive Mechanism of the Protector of Citizens" in first six months of its work<sup>58</sup> completed around 50 visits to the institutions at which PDLs are held and drawn up reports suggesting over 200 actions<sup>59</sup> to take in order to eliminate the identified shortcomings<sup>60</sup>.

<sup>57</sup> National Preventive Mechanism of the Republic of Serbia. 2012 Report, April 2013, in : [http://www.npm.lis.rs/index.php?option=com\\_content&view=category&layout=blog&id=6&Itemid=14](http://www.npm.lis.rs/index.php?option=com_content&view=category&layout=blog&id=6&Itemid=14)

<sup>58</sup> Report of 2013 hasn't been published yet, but as it was planned in 2012 Report, number of visits in 2013 should have been the same as in 2012.



### 2.3.2. Juvenile Judge and Juvenile Public Prosecutor

In addition to the National Preventive Mechanism against Torture, and in relation to children deprived of liberty within juvenile justice system, the supervision over enforcement and inspection of enforcement of educational measure is exercised by **the Juvenile judge of the Court** adjudicating in the first instance<sup>61</sup>. The Juvenile judge and Juvenile Public Prosecutor shall at least once a year undertake direct supervision and inspection of enforcement of educational measures<sup>62</sup>. Furthermore, the Juvenile judge of the Court adjudicating in the first instance and the competent Juvenile Public Prosecutor shall at least twice a year visit the juvenile remanded in a facility or institution for enforcement of educational measures where, in direct contact with the juvenile and the professionals engaged in enforcement of the educational measure and through inspection of relevant documents, they shall determine the lawfulness and correctness of treatment and evaluate the achievement in educational and proper growth of the juveniles' personality, as well as by direct inspection and review of the reports on the progress of the enforcement of the pronounced educational measure. In case they notice any irregularities they shall promptly notify the bodies and institutions in charge of supervision and enforcement of educational measures<sup>63</sup>, as well as the facility, i.e. institution where the educational measure is enforced. Following notification of the Juvenile judge and/or the Juvenile Public Prosecutor the bodies and institutions in charge of professional supervision as well as the management of the institution or facility where the educational measure is served, shall promptly institute relevant investigations and undertake measures to rectify the unlawfulness and irregularities and shall accordingly inform the Juvenile judge, and the Juvenile Public Prosecutor<sup>64</sup>.

The results of the field research indicate that the professionals in institutions are satisfied with the method of the realization of inspection visits by courts. These visits usually last one day during which the judge and the public prosecutor undertake direct supervision, conduct interviews with employees in the institutions as well as the juveniles and perform inspections of the relevant documents, after which they have a meeting with the employees where they discuss potential needs for improvement. The results of the research show that a regular contact with the juvenile judges is of great importance. However, the results also indicate that there is an inconsistent practice in the enforcement of supervision and inspection of the educational measures by different courts. A number of courts act in accordance with the legal obligations and make visits regularly, every six months, while other courts, especially from economically less developed areas do not make the supervisory visits at all or do so very rarely.

<sup>59</sup> The Report of 2012 contains general recommendation and also specific recommendations proposed to the public authorities: Police, Prison Administration for Enforcement of penal Sanctions, Psychiatric Hospital, Asylum Centre. Recommendations are mostly related to improvement of conditions. Recommendation for Correctional Institutions for Juveniles are not included in this report and minors are only mentioned in the recommendation to the Asylum Centre Bogovodja in last page of the Report. It says that "The officers of the Asylum Centre in Bogovodja shall provide the conditions, as well as necessary health care to all asylum applicants who have applied for accommodation, paying special attention to the health care of children". All the recommendations can be found on [http://www.npm.lis.rs/attachments/038\\_NPM%20%20report.pdf](http://www.npm.lis.rs/attachments/038_NPM%20%20report.pdf)

<sup>60</sup> Protector of the Citizens: Setting-up of National Preventive Mechanism in Serbia Initial 6 months, in [http://www.npm.lis.rs/index.php?option=com\\_content&view=category&layout=blog&id=6&Itemid=14](http://www.npm.lis.rs/index.php?option=com_content&view=category&layout=blog&id=6&Itemid=14)

<sup>61</sup> Article 99 Law on Juvenile Justice

<sup>62</sup> Article 100 Law on Juvenile Justice

<sup>63</sup> Ministry of Justice of the Republic of Serbia, Directorate for the Execution of Criminal Sanctions and Ombudsman of the Republic of Serbia

<sup>64</sup> Article 115 Law on Juvenile Justice

### **2.3.3. Directorate for Execution of Criminal Sanctions**

The Directorate for Execution of Criminal Sanctions shall organize, implement and oversee the execution of juvenile detention as well as the educational measure of remand to juvenile correctional home<sup>65</sup>. The Directorate is an authority attached to the Ministry of Justice of the Republic of Serbia.

The results of the field research indicate that this type of supervision regarding both enforcement of juvenile prison sentence and educational measure of remand to juvenile correctional home is performed regularly. This type of supervision lasts for several days during which professionals undertake direct supervision over the respect of the rights of persons serving criminal sanctions, such as the right to human treatment, visits, telephone contacts, correspondence, receiving parcels, food, hygiene, health care, legal assistance, education, religious rights etc. the supervision includes inspection of documents, direct supervision, conducting interviews with the employees in the institutions and persons serving educational measure or juvenile prison sentence. After the supervision has been completed, the Directorate for Execution of Criminal Sanctions shall issue a Measure Order<sup>66</sup> and set a deadline for the institution to follow the order and correct the determined irregularities. After six months have passed, the Directorate for the Execution of Criminal Sanctions shall perform inspection in order to determine whether the institution has followed the order. The results of the field research show that the professionals in institutions are satisfied with the method of the realization of inspection visits by the Directorate for Execution of Criminal Sanctions.

### **2.3.4. Other institutions**

Supervision over the enforcement of criminal sanctions are also exercised by other independent bodies, particularly non-governmental organizations that have established cooperation with the National Preventive Mechanism against Torture such as Helsinki Human Rights Committee in Serbia, Belgrade Center for Human Rights, Dialogue and the Committee for Human Rights – Valjevo, MDRI-S, IAN, the Victimology Society of Serbia and other non-governmental organizations within their own activities. Non-governmental organizations publish the results of the performed inspections in their reports.

Ombudsman as an independent body with the authority to control the work of the authorities and protect human rights also regularly acts on citizens' complaints and acts in accordance with his/her powers in order to protect the rights of persons serving criminal sanctions in the Republic of Serbia. The results of the field research indicate that the visits by the Ombudsman are relatively frequent and that the supervision by this body is undertaken regularly.

The Commissioner for Information of Public Importance and Personal Data Protection is also authorized to perform supervision within his/her powers in order to protect personal data.

Despite a solid legislative framework in relation to the supervision mechanisms, previous reports show a variety of problems in the implementation of supervision in practice. Thus, for example, the Report by Helsinki Committee for Human Rights indicates the problem arising from the fact that supervisory bodies spend insufficient time in their visits, particularly judges in institutions, as well as the problem of a lack of

<sup>65</sup> Article 12 Law on Execution of Criminal Sanctions

<sup>66</sup> Measure Order is more like Proposed Measure, list of recommendations with determined deadline for implementation. Some recommendations, especially from those related to the improvements of conditions depend on available budget, so it is possible that they can not be fulfilled within the proposed deadline. Usually, these recommendations are repeated again in the next Measure Order. Measure Orders are submitted to the institution, they are not published.

specific knowledge of professionals for evaluating all aspects significant for exercising rights of children deprived of liberty in the institutions during inspection visits<sup>67</sup>.

According to Helsinki Committee Reports 2011, the Valjevo Juvenile Penitentiary-Reformatory stresses that nearly 90% of minors are visited by judges, given that the judges predominantly come from big cities and visit several juveniles in one visit. Helsinki Committee, however, notices that “such practice is not particularly effective because the limited time of a particular visit and the large number of juveniles which are to be visited cannot provide true insight into their respective situations, treatments and potential complaints. In addition, it is evident that during the visits to juveniles sentenced to educational measures, they do not oversee the work of the institution and are not investigating the issue of the implementation of the treatment. With consideration of the separation of competences, Helsinki Committee feels that the courts must have a more active stance as regards this issue. In that sense, additional education of judges is needed, and a possibility of additional experts who could accompany them in their visits and who could make a more adequate assessment of the institution’s work and the attitude towards minors should be considered. Visits of the Ombudsman to institutions for juveniles should be more frequent, and there are no obstacles to local offices of the Ombudsman being included in the independent assessment process. This has not been the case thus far”.<sup>68</sup>

The results of the field research also point to the need for improving the knowledge and capacity of professionals performing supervision in order to adequately evaluate all aspects significant for the determination of exercising the rights of children deprived of liberty in institutions during supervisory visits. The professionals in institutions find that sometimes the supervision is provided by persons who lack sufficient experience in the field of supervision or who lack experience in the work in institutions for enforcement of criminal sanctions, while they are also insufficiently informed about the particularities of the work of certain institutions for the enforcement of criminal sanctions. Moreover, the respondents believe that it is necessary to work on improvement of the knowledge and capacities of a number of professionals performing supervision regarding skills of conducting interviews with employees and minors, as well as skills of giving feedback and developing and strengthening collaborative relationships.

Results of the research indicate that the professionals in institutions for enforcement of criminal sanctions understand the significance of performing supervision. Mostly, they see supervision as support for further improvements of work. However, a number of professionals pointed out that supervision is sometimes perceived as “spotting errors” and pressures, especially if it is performed by inexperienced persons who do not possess adequate communication skills but instead behave arrogantly.

Supervision of respecting the rights of children deprived of liberty in the social protection institutions is carried out by the **Ministry of Labour, Employment and Social Policy** (professional and inspection supervision). On the basis of the minutes<sup>69</sup> establishing certain irregularities, the social protection inspector reaches a decision ordering measures or imposing prohibitions and setting deadlines for enforcement of the measures and prohibitions ordered to the social protection institution.<sup>70</sup> In the field of juvenile justice, this type of supervision is relevant for institutions where the educational measure of remand to educational institution is enforced, having in mind that these institutions are in the jurisdiction of the Ministry of Labour, Employment and Social Policy.

Supervision of respecting the rights of children deprived of liberty in the social protection institutions is also performed by the Ministry of Health (supervision over the legality of work of health care facilities and

<sup>67</sup> Helsinki Committee for Human Rights in Serbia: Monitoring of the Prison System Reform, Prison System in Serbia in 2011.

<sup>68</sup> Helsinki Committee for Human Rights in Serbia: “Monitoring of the Prison System Reform, Prison System in Serbia 2011”, Belgrade, 2011

<sup>69</sup> Inspection report about conducted inspection with findings

<sup>70</sup> Articles 166-173 Law on Social Welfare

private practice as well as inspection supervision). The supervision shall be exercised by the Ministry of Health through health inspectors and inspectors in charge of the area of drugs and Medical devices. The health inspector, on the basis of the minutes establishing certain irregularities, shall hand down the decision ordering the measures, imposing prohibitions and setting deadlines for implementation of the measures ordered to health care facility or private practice.<sup>71</sup> In the field of juvenile justice, this type of supervision can be relevant for institutions which enforce security measure of mandatory psychiatric treatment and confinement in a health care institution, compulsory alcohol addiction treatment and compulsory drug addiction treatment.

By the new Law on Execution of Criminal Sanctions<sup>72</sup>, which was adopted and soon comes into force, a new institution has been established – **judge executive** responsible for protecting the rights of persons serving criminal sanctions, as well as detainees. Proceedings before the judge executive is initiated upon the request for the protection of courts or upon appeal by the detainee, and in the second instance the judge executive rules against the decision of the superintendent of the Institution or the Head of Management within three days from the announcement of the decision. Convicted person or detainee has the right to file an appeal to the judge executive within three months from the occurrence of the violation of rights, and exceptionally within six months if there was an objective impediment<sup>73</sup>.

#### 2.4. Complaint mechanisms available to children who are detained

In the field of juvenile justice system a juvenile who considers that his/her rights are violated, or that other unlawful actions have been committed during enforcement of institutional educational measures of remand to educational institution, remand to juvenile correctional home and juvenile prison sentence, is entitled to file a complaint **with the superintendent of the detention facility or institution** where such criminal sanction is enforced. In respect of the complaint the superintendent of the detention facility or institution where the educational measure or juvenile prison sentence is enforced shall, within three days, issue a written decision rejecting the complaint as groundless or finding it fully or partially justified in which case exigent relevant measures shall be undertaken to rectify the committed violations or depriving the juvenile of his rights, and/or other unlawful actions or irregularities. The juvenile may appeal the superintendent's decision within eight days with the juvenile Court bench of the first instance Court exercising supervision over enforcement of the educational measure and/or the juvenile Court bench of the adjudicating first instance Court which pronounced the juvenile prison sentence.<sup>74</sup>

A juvenile may file a complaint **with the Ombudsman**. Prior to submitting a complaint, juvenile is required to endeavour to protect his/her right in appropriate legal proceedings and make sure all legal remedies have been exhausted. Exceptionally, the Ombudsman may initiate proceedings even before all legal remedies have been exhausted if the complainant would sustain irreparable damage<sup>75</sup>. The Juvenile Penitentiary House Rules<sup>76</sup> prescribe that the institution for enforcement of juvenile prison sentence in Valjevo is obliged to provide a sufficient number of envelopes for juveniles and that juveniles are entitled to file complaints with the Ombudsman in a sealed envelope<sup>77</sup>.

<sup>71</sup> Law on Health care, Articles 243 and 248

<sup>72</sup> RS Official Gazette No. 55/2014

<sup>73</sup> Article 33-37 Law on Execution of Criminal Sanctions

<sup>74</sup> Article 97 Law on Juvenile Justice

<sup>75</sup> Article 25 Law on the Protector of Citizens

<sup>76</sup> 71/06

<sup>77</sup> Article 109 House Rules of the Penitentiary in Valjevo

Furthermore, the juveniles serving educational measure, juvenile prison sentence or security measure have the possibility to file a complaint **with the relevant ministries in charge of performing supervision over the legality of the work of all institutions in their jurisdiction, namely with the Ministry of Justice – Directorate for the Execution of Criminal Sanctions regarding all criminal sanctions, the Ministry of Labour, Employment and Social Policy regarding the measure of remand to educational institution, as well as with the Ministry of Health regarding security measures.**

Despite a solid legislative framework, the reports point to the problem of implementation in practice when implementing complaint procedures. Although all institutions implement complaint procedures which provide the juveniles with the possibility to file complaints in case of violation of their rights, research show that juveniles are not always satisfied with the way these mechanisms work in practice. Also this report shows that children in institutions are not sufficiently aware of their rights, responsibilities, ways of protection of their rights and possibilities for complains in the case of denial of violations<sup>78</sup>.

The results of the field research indicate that juveniles very rarely use the mechanism for filing complaints to protect their rights. The respondents cited various reasons for a passive attitude towards protection of their rights. The most common reason was based on a low degree of belief that the complaints would lead to changes. Moreover, juveniles believe that if they experience problems, it is enough to report to their educator with whom they have built a relationship of trust, and who will take further steps for overcoming the problem or maybe to their superintendent. Filing complaints to the manager, judge or Ombudsman are mechanisms that are very rarely used. Also, the results show that the complaint mechanisms are used mainly in oral form (conversation with educators, superintendent, and manager), and that the written form is possibly used when filing a request for conversation (Request for application report or a confidential conversation). The research results also indicate the existence of fear of retaliation, especially by the informal groups that exist in the institutions, which also prevent juveniles from using complaint mechanisms, especially the ones in written form. However, neither of the respondents serving the educational measure or juvenile prison sentence had any complaints regarding using complaint procedures nor propositions for their improvement.

Also, they were aware of all complaint mechanisms available to them. Juveniles are informed about their rights at reception, and the complaint mechanisms are also very clearly presented on a poster or brochures containing information on rights, which are available in the institutions for enforcement of educational measures or juvenile prison sentence as a result of a project realized during 2013 by the Judicial Academy, the Council for monitoring and improvement of the work of the bodies in criminal proceedings and execution of criminal sanctions against juveniles, Child Rights Centre, and with the support of the International Management Group – IMG. The research results show that it is necessary to work on further improvement of participation of juveniles serving criminal sanctions and their further encouragement to use complaint mechanisms.

### 3. Conclusions

In recent years, the Republic of Serbia has taken major steps to harmonize national legislation and to provide implementation of the rights on the children deprived of the liberty according to ratified conventions and international standards. Serbian legislation contains a number of statutory provisions which clearly regulate the supervision mechanisms as well as complaint mechanisms available to juveniles, particularly in the institutions for enforcement of criminal sanctions. The supervisory visits by the

<sup>78</sup> Đurađ Stakić: Right of Children Deprived of Liberty - Independent assessment of the state of right of children in conflict with the law in the juvenile justice institutions in Serbia, International Management Group, the Ministry of Justice of the Republic of Serbia and the Kingdom of Norway, 2011, page 7



international and national authorities are usually carried out regularly, and the employees in the institutions are mostly aware of the significance of these visits to the improvement of their work. In the Republic of Serbia there are several national monitoring mechanisms /bodies, and in relation to the institutions in the field of juvenile justice system, the supervision by the following institutions is especially relevant: NPM, Directorate for the Execution of Criminal Sanctions, Juvenile judge and Juvenile prosecutors, Ombudsman and non-governmental organizations. The visits by these bodies present a crucial link for further improvement of rights and protection of juveniles in the institutions for enforcement of criminal sanctions, as well as for further improvement of the work of professionals employed in these institutions.

In spite of solid legislation, the implementation of supervisory visits in practice has shown that it is necessary to further work on strengthening of the supervision mechanisms especially in the field of further improvement of the capacities of the professionals engaged in supervision so that they could be able to detect all aspects significant for the assessment of the degree of exercising of rights as well as to undertake supervision in a professional and efficient way. In particular, there is the need to strengthen the capacities of professionals performing supervision for improvement of skills of interviewing employees in the institutions and juveniles, as well as skills of active listening and providing feedback. Furthermore, it is necessary to simultaneously work on the improvement of knowledge of professionals employed in the institutions where the supervision is performed about the significance of supervision for further improvement of work as well as further respect and protection of rights of juveniles. At the same time, it is important to work on further improvement of the supervision and establishment of regular supervisions by those bodies that have not yet been able to perform supervision regularly even though they have the legal possibility or those bodies that did not undertake supervision regularly in the legally defined deadlines.

The legal framework of the Republic of Serbia also contains good legal solutions regarding the issue of complaint procedures. However, these procedures are very rarely used in practice, so it is necessary to work on further strengthening of the usage of complaint procedures and improvement of the capacities of juveniles to actively participate in the protection of their rights. In particular, it is important to work on developing a support system for juveniles regarding filing complaints, both in the sense of providing legal assistance and assistance in producing complaints, and in the sense of establishing a system of measures and procedures that will provide juveniles with trust and security during the complaints procedure and after its completion.

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