



# RESPECT FOR HUMAN RIGHTS OF DETAINEES AND PRISONERS IN THE INSTITUTION FOR EXECUTION OF CRIMINAL SANCTIONS

## SUMMARY OF THE REPORT



Centar za građansko obrazovanje



EU funded project, managed by by the Delegation of the European Union to Montenegro



Ambasada Savezne Republike Njemačke Podgorica

The monitoring team of Human Rights Action (HRA), Centre for Anti-discrimination EKVISTA, Centre for Civic Education and Women Safehouse has undertaken a considerable monitoring action of the respect for human rights of persons deprived of their liberty and located in the Institution for Execution of Criminal Sanctions (*Zavod za izvršenje krivičnih sankcija* – ZIKS). The action lasted since November 2011 to date, thanks to the financial support of the European Union (European Initiative for Democracy and Human Rights) and the German Embassy in Podgorica for the project "Monitoring respect for human rights in the closed institutions in Montenegro". In addition to prison monitoring, this project includes monitoring of the social care institution "Komanski most" for people with mental disability, of the centre for juveniles in conflict with law "Ljubović" and psychiatric clinics in Montenegro.

The prison monitoring was founded on the agreement signed on 25 October, 2011 between the Minister of Justice, Mr. Duško Marković, ZIKS director, Mr. Milan Radović and the project coordinator, Ms. Tea Gorjanc-Prelevic, director of HRA, on behalf of the NGO project partners. The agreement allowed for visits of monitors announced 24 h in advance, as well as access to documents involving medical and disciplinary proceedings files in accordance with the agreement of the prison inmate involved or with adequate protection of personal data.

The team members, lawyers and sociologists by education, were initially trained by the experts in prison monitoring from partner NGOs from Latvia (Latvian Human Rights Centre) and Serbia (Belgrade Centre for Human Rights). The team was also supported by a psychiatrist, member of the European Committee for the Prevention of Torture or other Inhuman or Degrading Treatment or Punishment (CPT), who was charged with monitoring of the prison health services.

The monitors have undertaken a total of sixteen visits to the prisons in Podgorica and two visits to the prison in Bijelo Polje.

The cooperation with the prison administration was on the whole satisfactory, considering that it was the first such continuous NGO monitoring exercise involving access to prison buildings. Nevertheless, the ZIKS director (Milan Radović, who recently resigned from office) refused to allow monitors to talk in private with the sentenced prisoners, which compromised the information obtained from them in the presence of prison guards. This short-coming was bypassed thanks to the Minister of Justice, Mr. Duško Marković, who supported the idea of anonymously polling the sentenced prisoners in Podgorica. The survey was undertaken solely by the NGO monitors who supplied the sentenced prisoners with questionnaires, waited for them to fill them out and collected them straight from their hands, hence leaving the prison staff out of the survey process. Considering that at the time of polling, a lot of prisoners were out of their premises due to labor engagement and that there were others who expressed their mistrust at the privacy of polling, the turn out was highly satisfactory, as out of 840 prisoners, 495 have been polled, more than half of total population of sentenced

prisoners (58,9%). The collected data were used as additional source of information for the report. The monitoring team members also interviewed in person 11 former prisoners.

The prison director also prohibited monitors from interviewing prison guards regarding their working conditions, but monitors nevertheless managed to hear their grievances that were ultimately also recognized by the Ministry of Justice in its report for 2011, published in May 2012.

The communication of information from the prison administration to the NGO monitors involved considerable time, sometimes measured in several months, which also points to the lack of sufficient staff and well managed databases allowing speedy access to all relevant information.

The prison officers were generally friendly towards the monitors and went out of their way to assist them. However, the orders of the director in terms of restricting private access to prisoners were strictly obeyed.

The primary goal of the project was to assess implementation of the recommendations uttered by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CAT) to the Government of Montenegro following the Committee's visit to Montenegro in September 2008.

Our assessment is that 10% of the CPT's recommendations have been fulfilled, 21,7 % partially fulfilled, and 68,3% have not yet been fulfilled.<sup>1</sup>

In addition to the reiteration of the CPT's recommendations, the NGO monitoring team has provided the prison and the Government with additional 164 recommendations suggesting improvement of the prison regime, with the ultimate goal of preventing torture and other forms of ill-treatment and protecting other human rights of persons deprived of their liberty in Montenegrin prisons.

At the round table discussion of the report on 22 June 2012, the minister of justice and human rights Mr. Duško Marković acknowledged and complimented the report as objective, whereas the new prison director announced that the prison management will set-up an action plan in order to fulfill the recommendations.

## **PREVENTION AND PROTECTION FROM ILL-TREATMENT**

There are examples of the excessive use of force in ZIKS amounting to inhuman and degrading treatment. It is particularly concerning that slamming occurs frequently and that prison guards are not familiar with the absolute prohibition of the use of force as punishment. They lack tailor-made training in physical and mental skills for suppression

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<sup>1</sup> Please note, that full report in Montenegrin language is available at <http://www.hraction.org/?p=2052>

and prevention of violence. Every fourth sentenced prisoner in Podgorica prisons (25.9%) confirmed to have been subjected to the use of force by the prison officers. More than a third of prisoners (36.3%) have witnessed force being applied against another prisoner. They have also pointed to particular places, hidden from the reach of camera, where the abuse occurs. Former prisoners explained that the physical abuse by prison guards is rarely reported, because the guards threaten the inmates with filing reports against them for attacking the prison officer. Also, it was observed that two applications with the Ombudsman for ill-treatment were withdrawn without explanation in 2011.

In breach of law and CPT recommendation, not every use of force is recorded in ZIKS. Regulations should be amended to require reports on every use of force to be sent to the ministry of justice and the competent state prosecutor, together with the medical reports and statements of the prisoner against whom the force had been applied. More attention needs to be paid to prevention of violence among prisoners.

## **DICIPLINARY BREACHES, PROCEDURES AND MEASURES**

Two thirds of prisoners stated lack of access to Prison rules. Fair trial guarantees should be strengthened in relation to disciplinary proceedings leading to possible solitary confinement. There were not enough evidence to support that all prisoners were served with a sentence allowing them to exercise right to appeal. Solitary confinement should be limited to not more than 21 day. Approximately 1/3 of prisoners stated to have been subjected to solitary confinement. A quarter of those stated that during confinement they have not been afforded out-door exercise at all (27.2%), whereas another quarter (24.4%) stated that they have spent less than an hour out door. Right to contact with family members should not be abolished for the persons in solitary confinement – the rules should be put in accordance with the law in this regard. Treating self-injuring primary as breach of discipline and not sign of mental illness needs to be reviewed. The right to appeal needs to be explicitly provided and observed in all cases, including cases of segregation and transfer to another prison. Prisoners should be informed of their right to free legal aid. This right should be extended vulnerable prisoners also in relation to disciplinary proceedings.

## **ACCOMODATION CONDITIONS**

It is striking that the number of people waiting to serve their sentences (1197) is significantly larger than the total current prison population in Montenegrin prisons (874 sentenced prisoners). More emphasis needs to be put on alternative sentences and the capacities of Podgorica and Bijelo polje prisons need to be urgently increased by construction and reconstruction. There is significant overcrowding in the prisons for

long-term and short-term sentences in both Podgorica and Bijelo Polje. On the brighter side, the situation with the remand prison in Podgorica significantly improved since the CPT visit in 2008, as the number of prisoners on remand was cut to half. There is no more overcrowding in detention, although the 4sqm standard is still not observed in a number of cells, which generally look untidy and shabby. The reconstruction of the A wing of the prison for long-term sentences in Podgorica should be a priority, as well as the construction of a new prison in Bijelo Polje and another building for long-term sentences in Podgorica, as planned by the Government.

## **HEALTH-CARE SERVICE**

Although the number of doctors has been increased in Podgorica from 1 to three, the number of medical staff needs to be increased as well as their status regulated in accordance with the law. Another psychiatrist and a psychologist should be employed and more medical equipment purchased. The practice of a prison guard participating at the medical examination needs to be abolished. All prisoners should be provided access to their medical files, upon request. There should be a particular registry of trauma injuries of prisoners. All persons infected with Hepatitis C should be directed to adequate treatment. All mentally ill persons should also immediately be sent to an appropriate institution and not exposed to a prolonged fixation, which amounts to inhuman treatment. The prisoner M.Z. who was in need of special mental hospital treatment since the 2008 CPT visit should imminently be directed to such hospital.

## **PRISON REGIME**

Remand prison regime needs to be improved urgently so that detainees are not locked for 23 hours in their rooms without any purposeful activities. More professional staff should be employed in the treatment unit. A business plan should be developed for an increase in prison production and work engagement of at least 90% of prisoners who would like to work according to the survey. Provide employment for more female prisoners and expand their choice of employment, as for the male prisoners. Foreign prisoners who do not understand the language need to be assisted with interpretation of House Rules and elde. Excess to official education as well as to training courses in computer literacy or language should be provided. Post-penal system needs to be developed.

## **CONTACT WITH THE OUTSIDE WORLD**

Visits by unmarried partners should be defined by law. Right to conjugal visits should be extended to homosexual couples, as they cannot possibly be married in Montenegro. Right of remand prisoners to receive books should also in practice not be dependant on

the decision of a judge. Right of remand prisoners to phone conversations should be increased. Persons in solitary confinement should not be prevented from receiving visits of family members.

## **PRISON STAFF**

Prison staff working contracts should be put in accordance with the law, so that half of staff that was engaged on the basis of short-term contracts should be employed on permanent basis. Staff should receive continuous training. Staff levels should be increased in the security and treatment sectors.