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"Efficient Prison Management in Bosnia and Herzegovina"

PROCEEDINGS OF THE PROJECT

Sarajevo, July 2010

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"Efficient Prison Management in Bosnia and Herzegovina"

I. STRENGTHENING THE USE OF ALTERNATIVE SANCTIONS

FRAMEWORK STRATEGIC DIRECTIONS FOR POSSIBLE INTRODUCTION OF COMMUNITY SANCTIONS AND MEASURES IN BOSNIA AND HERZEGOVINA

Sarajevo, June 2010

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"Framework strategic directions for possible introduction of community sanctions and measures in Bosnia and Herzegovina" is the final document of the project.

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FOREWORD

This paper presents the situation as at 14 April 2010, and represents the framework strategic directions for further development and the introduction of sanctions and measures to be implemented in the community (hereinafter: "community sanctions and measures"), and is a result of the work of Working Group One – *Strengthening the use of alternative sanctions* – within a joint project between the European Union and the Council of Europe – *Efficient Prison Management in Bosnia and Herzegovina* – implemented from 1 February 2009 to 31 July 2010.

We would like to welcome you to this paper designed to contribute to the promotion of community sanctions and measures in BiH, including some practical proposals for possible legal solutions and implementation guidelines.

It should also be remembered that this document is not a final document: It is a living document which can be upgraded as the needs arise or as the community sanctions and measures evolves in time.

We trust that this document will serve the authorities well in the years to come.

Finally, we would like to express our appreciation to the competent ministries for their support of this project in its entirety.

I. INTRODUCTION

The Joint Programme of the European Union (hereinafter: "the EU") and the Council of Europe (hereinafter: "the CoE") should present the possibilities for introducing community sanctions and measures into practice as an effort against overcrowded prisons and an effort towards developing framework guidelines for the establishment of probation services. This activity is also related to the Strategy for justice sector reform in Bosnia and Herzegovina for the period 2008 - 2012[1] (hereinafter The Strategy).

Within the reform of criminal sanction implementation, the Strategy implies the promotion of alternative sanctions and the implementation of the 'community service' institute through a pilot project and proposing general solutions and regulations as to the implementation, as well as making a study on the introduction of other forms of alternative sanctions. Similarly, within the development of a conditional release system, it implies an analysis of the conditional release system, and an analysis of and proposal for the introduction of a probation system.

Today, community sanctions and measures represent a recognised form both in criminal legislation and in practice of European countries. Modern

[1] The Strategy was adopted in late June 2008 by the Council of Ministers, the entity governments and that of the Brčko District.

legislation increasingly introduces alternative sanctioning that can take on different forms and can be applied in pre-trial proceedings or the trial, sentencing or post-sentencing stages in order to avoid the negative effects of imprisonment, so as to pronounce prison sentence only for serious criminal offences and so as to keep the individual in the community. On the other hand, these types of measures contribute towards a better reintegration of offenders, stimulating and strengthening their sense of responsibility and social skills through confrontation with the consequences of their offences and requiring them to perform activities contributing to their re-socialisation. Participation of the community is of immeasurable importance in this process. Community sanctions and measures can only be implemented within a community-oriented infrastructure and can only be implemented if there is an adequate organisation, which is usually a probation service.

This paper will focus on community service and suspended sentence with supervision that already exists in the legislation in force, conditional release with supervision that does not exist in the applicable legislation, and the possibilities of their introduction into practice, as well as on guidelines for establishing a probation service.

II. COMMUNITY SANCTIONS AND MEASURES IN EUROPEAN COUNTRIES

2.1. Criminal legislation

Criminal legislation of European countries includes a number of various community sanctions and measures applied to all the stages of criminal proceedings, implying that they are defined in the criminal code and, generally, represent a combination of control and support, as well as the imposition of conditions restricting the offender's freedom. In terms of electronic supervision, it is applied as a separate sanction or as a condition in conjunction with a measure or sanction.

Similarly, it should be noted that most legislative systems require the offender's consent, which automatically implies their willingness to participate. Another important aspect is the involvement of the community, since the offender remains in a community which may be directly involved in the implementation of community sanctions and measures and is always involved in informal social support. Effective implementation requires an organisation that has developed working methods, mission and goals, which will implement the sanction or measure in question and make the necessary links with the community.

We will briefly mention possibilities relating to different stages of criminal proceedings stipulated in criminal legislation of European countries.

a) Pre-trial proceedings at the prosecution level:
The prosecutor's work and the principle of opportunity, application of diversion measures, mediation, offender-victim compensation, bail, restriction of certain rights and freedoms, such as the limitation of movement or house arrest.

b) *Examples of alternatives to custody in pre-trial proceedings:*
Conditional or unconditional waiver of release, financial settlement or a transaction, compensation, mediation and restitution order (restoration to the previous condition), conditional release during pre-trial proceedings, community service, medical treatment, bail, police supervision, restraining order with regard to a place or person, courses, house arrest with or without an electronic transmitter, temporary conditional release, controlled release.

c) Sentencing stage
Suspended sentence with or without supervision, community service work, treatment order for drug or alcohol abusers, intensive supervision under certain categories, fines, reparation/compensation/order for restitution, curfew, house arrest (with or without electronic monitoring)

d) Post sentencing stage
Conditional release or/and conditional release with supervision, weekend detention, semi-liberty, work release, house arrest (with or without electronic monitoring), serving sentence in some outside institutions.

2.2. Enforcement authorities

In most European countries, the authorities competent for the implementation of community sanctions and measures are probation services, with various models reflecting a number of different cultural, judicial, social and political structures, as well as the size of the country, the scope of services they offer, the integration degree into the judicial system or social welfare system, etc.

Most of the Probation Services' models share the following **categories of tasks:**

- Reports
The nature of written (occasionally oral) reports to criminal justice authorities can vary greatly depending on the purpose, the addressee and the phase of the criminal procedure in which the report is delivered and can take the form of social enquiry report, pre-sentencing reports, expert observation of the personality and psychosocial situation of the offender, advisory reports, progress reports with regard to supervision on licence etc.

- Enforcement of sanctions and measures (execution of decisions made by judicial authorities):
The Probation Services are involved in the execution of almost all sanctions with the exception of fine, suspended sentence without probation, pardon and amnesty; they are increasingly involved in the custodial or non-custodial therapeutic measures, drug/alcohol treatment measures, preventive security measures, psychiatric probation orders, guardianship orders, etc.

- *Guidance, help and assistance (support and care for offenders during the enforcement of sanctions and measures)*
providing information and advice, assisting with material problems (in the fields of housing, work, income) and immaterial problems (physical, social, relational, emotional, justice-related) arranging or advocating resources, creating contacts, referring to other bodies etc. The interventions are adjusted to the character of the problem, the nature of the offence committed (drug offenders, sexual offenders, violent offenders) and the client category (mental disorders, detained offenders, addicts, ethnic minorities).

- *Work inside prisons*:
In some countries special social services within prisons collaborate with the Probation Service, in some others the Probation Service's tasks include assessment of risk and degree of danger of prisoners, preparation for release, supervision in the community on release and family work to assist reintegration, assistance to inmates on reward leave permits.

- Mediation:
not only in the pre-trial or trial phase as a diversion measure but also in the post-sentence phase to find a solution to conflict situations or, like in England and Wales, whenever an application for parole is made, to inform the victim and to discuss the possible consequences.

- Aftercare:
providing released prisoners with aftercare was one of the core tasks of the first probation services in Europe. In several countries (England and Wales, Austria, Ireland) this activity is still a very important task of the Probation Service, in other countries (the Netherlands, Finland, Italy, Norway) it is carried out by the local social services, sometimes in co-operation with the prison social service staff or the Probation Service.

The legal framework for the position of probation services within the criminal justice system and its specific role are defined in criminal legislation. The organisational and functional aspects of the probation system are defined by different legal documents such as a law on enforcement of criminal sanctions or a separate law on probation, or various provisions and rules of procedure. Specific probation activities and everyday work are, in most countries, regulated by circulars issued by the government or ministries, by standards, instructions or directions of the ministry, as well as by rules of procedure.

With regard to specific **organisation models** of the probation service, they reflect the social and cultural background and the size of individual countries, and can be divided into three groups:

1. In most countries, the probation service is a government body with a centralised structure, falling within the competence of the ministry of justice. In this case, the probation service may be organised as an independent authority (Ireland, Romania, Moldova, Portugal, etc.) or as a separate department under the authority of prison authorities (Bulgaria, Denmark, Estonia, Sweden, France, etc.) or can be joined with services for rendering assistance to

victims, for mediation, etc. (Hungary and Belgium). Luxemburg stands as an exception to this, with this service being part of the prosecution service; and in Scotland, the service is a separate department within the regional social services authorities.

2. In Germany, Catalonia and Switzerland, probation activities are distributed between the probation service and social services operating within the criminal justice system.

3 In Austria and the Netherlands, it is a private organisation funded by public funds.

Most probation services are funded from the state budget allocated to the ministry of justice.

With regard to **human resources**, probation officers must have adequate professional qualifications, so that they include social workers, legal experts, psychologists or teachers; new employees are sometimes first hired for a conditional period before confirmation in post. In some jurisdictions there is a formal Probation training course, led by a university that must be completed before appointment. In- service training also varies: Training Centres (sometimes shared with the prison service), organise courses, on key skills, new methods and relevant legislation and regulations. There is also training with regard to management skills and leadership development for senior staff.

III. COUNCIL OF EUROPE RECOMMENDATIONS

CoE has long since recognised the importance of community sanctions and measures and, accordingly, developed a number of recommendations, which will be explained below.

- Resolution (65)1 on suspended sentence, conditional release and other alternatives to imprisonment,
- Recommendation R(92) 16 on European Rules on community sanctions and measures,
- Recommendation Rec (1997) 12 on staff concerned with the implementation of sanctions and measures
- Recommendation (1999) 22 concerning prison overcrowding and prison population inflation
- Recommendation R (2000) 22 on improving the implementation of the European rules on community sanctions and measures
- Recommendation (2003) 22 on conditional release (parole)
- Recommendation Preporuka Rec (2003) 23 on the management of life sentence and other long term prisoners
- Recommendation Rec (2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safe guards against abuse
- and Recommendation R (2010)1 on probation rules

The European rules on community sanctions and measures are foreseen as a parallel to the European prison rules and should not be regarded as a system serving as a model. Instead, they represent a set of obligations open to general acceptance, on the basis of which actions can be taken. They are developed so as to establish a set of standards enabling government legislators and those in charge of enforcement in practice (i.e. decision-making authorities and enforcement authorities) to ensure a fair and effective implementation of community sanctions and measures.

Furthermore, the *Recommendation on improving the European rules on community sanctions and measures* offers, among other things, some examples of community sanctions and measures in order to help legislators introduce diverse sanctions and measures into domestic legislation (Appendix 2 Article 1).

The Recommendation on conditional release (parole) states that, in principle, conditional release should also be accompanied by supervision consisting of help and control measures. The nature, duration and intensity should be adjusted to each individual case.

The Recommendation on long-term prisoners states that … particularly in the case of long-term prisoners necessary steps shall be taken to ensure a gradual return to life in society … this goal can be achieved through a special programme for release preparation or by partial or conditional release under supervision with adequate social support.

The Recommendation concerning prison overcrowding states that

- Efforts should be made to reduce recourse to sentences involving long imprisonment, which place a heavy burden on the prison system, and to substitute community sanctions and measures for short custodial sentences;
- In providing for community sanctions and measures which could be used instead of deprivation of liberty, consideration should be given to the following:
    - suspension of the enforcement of a sentence to imprisonment with imposed conditions,
    - probation as an independent sanction imposed without the pronouncement of a sentence to imprisonment,
    - high intensity supervision,
    - community service (i.e. unpaid work on behalf of the community),
    - treatment orders / contract treatment for specific categories of offenders,
    - victim-offender mediation / victim compensation,
    - restrictions of the liberty of movement by means of, for example, curfew orders or electronic monitoring.

The Recommendation concerning remand in custody states that

- Being presumed innocent until proved guilty, no person charged with an offence shall be placed in custody pending trial unless the circumstances make it strictly necessary.
- Custody pending trial shall therefore be regarded as an exceptional measure and it shall never be compulsory nor be used for punitive reasons;
- In order to avoid inadequate custody, there should be a widest range of alternative, less restricting measures concerning the treatment of a suspect.

The Recommendation on probation rules
It defines the establishment and proper functioning of probation services, but is also related to other organisations dealing with probation activities. It makes a whole with the above mentioned recommendations.

As can be seen, a wide range of CoE documents recommends community sanctions and measures and sets relevant standards, which is in accordance with their growing application in member states.

DEFINITION

According to CoE recommendations, the term 'community sanctions and measures' means sanctions and measures which maintain offenders in the community and involve some restrictions of their liberty through the imposition of conditions and/or obligations, which are implemented by bodies defined by law. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction as well as ways of enforcing a sentence of imprisonment outside a prison establishment.

IV. CURRENT CIRCUMSTANCES CONCERNING THE IMPLEMENTATION AND INTRODUCTION OF COMMUNITY SANCTIONS AND MEASURES

There are certain analyses[2] on the possibility of introducing community sanctions and measures into BiH practice, and there have also been several attempts at introducing the implementation of certain sanctions and measures into practice, but they have failed. These attempts will be mentioned with regard to individual sanctions and measures.

[2] Alternative sanctions for juveniles, in contravention of law in BiH – a pilot project in the Sarajevo Canton, Stefania Kegel, Council of Europe;
Study on the preconditions and requirements for the application of the alternative sanction of community service in the BiH Federation, Vildana Vranj, DFID, Sarajevo, February 2005.

In the BiH Federation, there is an ongoing process of drafting amendments to the Law on enforcement of criminal sanctions, which will enable electronic supervision.

Further development of the possibility of implementing community service, suspended sentence with supervision and conditional release with supervision starts from the current possibilities in terms of practical application of the current legal solutions in order to make them effective, considering the infrastructure required for their implementation.

We have made proposals for the changes of Criminal Code. If these are accepted it will be a need to make corresponding changes in Criminal Procedure Code.

4.1. COMMUNITY SERVICE

Community service is one of the most important and most progressive sanctions implemented in the community today. It was first introduced into European legislation in 1970's. The main feature of this sanction is that it is imposed on persons committing less severe criminal offences, so that the offender performs certain work without compensation to the favour of the community, for a certain number of hours, as the principal or accessory punishment. This implies that an offender is not excluded from the community but, rather, that the help and supervision of the community, voluntary activities, work and responsibility in terms of the consequences of a criminal offence raise awareness of the detrimental effects of certain types of behaviour, and strengthen responsibility for harmful effects.

Community service implies work benefit to and for the community, meaning that such persons perform socially beneficial work in organisations involved in activities of public interest. Community service was introduced into BiH legislation but has not been implemented in practice, except for some local initiatives.

1. Legal grounds

- **Criminal Code**

The criminal codes (hereinafter: 'the CC') of BiH[3] (Article 43), RS[4] (Article 34) the BIH Federation[5] (Article 44) prescribe the possibility of imposing and implementing the sanction of community service. It may be imposed if the court imposes imprisonment of up to 6 months, or up to one year in the BiH CC, which can be replaced by community service with the offender's consent. The same applies when a fine is substituted with imprisonment.

[3] Official Gazette of BiH, No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10.
[4] Official Gazette of RS, No. 49/03, 108/04, 37/06 and 70/06.
[5] Official Gazette of the FBiH, No. 36/03, 37/03, 21/04, 69/04 and 18/05.

Community service is determined for duration proportional to the imposed imprisonment, from a minimum of ten to a maximum of sixty working days, of 90 in the BiH CC. The RS CC differs from those of BiH and the BiH Federation insomuch as it stipulates that community service cannot be shorter than one month nor longer than the imposed imprisonment, which is an unusual solution, leading to the **recommendation** that the RS CC be harmonised with other criminal codes with regard to this matter, since it places offenders into an unequal position and fails to give courts clear guidelines.

It is recommended that all three criminal codes be harmonised both in terms of the length of imprisonment that can be replaced with community service, and in terms of the number of working days. It is suggested that, instead of working days, the number of work hours be used, which is the practice in most European countries. The average number of work hours is between 60 and 300 (not more than 500 – which is quite rarely the case).

Furthermore, the FBiH and BiH laws stipulate that the period for executing community service, cannot be less than one month or longer than one year. However, the RS CC does not stipulate any period relating to the implementation of community service, which is why its stipulation is **recommended**.

When, upon the expiry of the determined period, the offender has not completed or has only partly completed the community service, the court shall render a decision on the enforcement of imprisonment for a period proportional to the remaining amount of community service.

Placement in community service as to the type and the place of work shall be made by the BiH Ministry of Justice, the RS Ministry of Justice, and cantonal ministries of justice in the BiH Federation. The BiH and RS CCs doe not prescribe that this placement is made according to the place of residence, while the Federation CC does, which is why it is **recommended** that all three codes incorporate the provision that "in principle, community service is performed in the place of residence," leaving the possibility that a offender can also perform this service in other places available, should it not be possible in the place of residence.

- **Law on enforcement of criminal sanctions**

Community service is prescribed by the Law on enforcement of criminal sanctions of BiH (hereinafter: 'the Enforcement Law')[6] Article 207-208 and the Enforcement Law of RS Article 186-188,[7] while it is not prescribed by the FBiH Enforcement Law as it is assumed that this issue should be governed by the respective cantonal laws.

Both laws designate the ministry of justice as the body in charge of these activities, and it concludes contracts with employers receiving an offender for

[6] Official Gazette of BiH, No. 12/10.
[7] Official Gazette of RS, No. 12/10.

the purpose of community service, stipulating mutual rights and obligations developed in detail in the RS Enforcement Law. As follows from the BiH Enforcement Law, community service can be performed with every legal or natural person. The RS Enforcement Law offers a somewhat different solution, as the minister issues a decision identifying the *employers* community service can be performed with, stating that this service must be in the public interest enabling the purpose of the sanction to be fulfilled.

The BiH Enforcement Law stipulates that the Ministry issues a decision as to the place of work of the offender within 8 days from the day of receiving a legal and binding decision; however, the RS Law does not stipulate any deadline, which is why the **recommendation** is that a period between 8 and 15 days be defined.

Similarly, both laws prescribe that community service is performed in the place of residence, except that the BiH Enforcement Law stipulates that it is so 'in principle', leaving room for exceptions, i.e. for service to be performed outside the place of residence. This definition is important as it implies the possibility of community service in another place when it is not possible in the place of residence; it is therefore **recommended** that the same solution be incorporated into the entity enforcement laws.

The BiH Enforcement Law explicitly states that labour related issues should be dealt with applying relevant general regulations, while the RS Enforcement Law does not have such a provision, but this solution can be read from other provisions. Similarly, it is prescribed that such work is unpaid and that the offender does not bear the enforcement expenses, while the RS Enforcement Law does not tackle these issues, which is why it is **recommended** that it incorporates them.

Both Laws stipulate that a Rulebook on types and conditions of the enforcement of community service be developed.

In the RS Enforcement Law, supervision over the enforcement of this sanction is regulated in the form of the inspection service responsible for prisons, while the BiH Enforcement Law does not define this issue. It is **recommended** that supervision over community service be defined, as well as the body responsible for it and the manner in which it can be done.

- **Rule Book on types and conditions of the enforcement of community service**

This rule book is develop at the BiH level alone,[8] while there is no such rule book in RS, and the Federation cantons are developing their rule books in accordance with the BiH one.

We will briefly explain the way the enforcement is foreseen in practice. The Ministry of Justice must issue a decision on placement to work within 15 days,

[8] Official Gazette of BiH, No. 18/06.

stipulating also the beginning, schedule and the end of the service, as well as a decision on appointing the commissioner. The Rule Book also includes the possibility of postponement and termination of community service.

The Rule Book defines certain costs covered by the employer, including the offender's insurance against the workplace accidents and professional diseases. It is also stipulated that, prior to issuing a decision on placement, the Ministry of Justice orders the offender to undergo a medical check-up, but it is not defined who should cover the relevant costs. The issue of healthcare during community service is not well regulated either. It is **recommended** that there should be a general provision governing these issues; in other jurisdictions, these issues are usually governed by a contract or other written agreement between the probation service and the community service provider.

Community service is performed according to an individual plan defined by the competent civil servant and the commissioner, for each offender. The above civil servant is an employee of the Ministry of Justice, while the commissioner is the employer's officer in charge of direct supervision. There is no provision stipulating the participation of the offender in developing the above plan, or stipulating that offender should sign the plan upon becoming familiar with it. Similarly, there is no definition of the content of individual plans. It is **recommended** that the above issues be defined by the Rule Book.

The civil servant introduces the offender to their rights and duties, exercise of their rights, and the consequences of failing to perform their service. The commissioner must introduce the offender to their job, offer them help and protection and, in cooperation with the civil servant, supervise the performance of service and relevant duties.

The civil servant must, at least once in ten days, personally inspect the performance of community service and record it in the personal file of the offender. The file and a relevant registry are kept with the Ministry of Justice, while the commissioner keeps a file for every person he supervises.

After each third of the service, the commissioner submits a report to the Ministry of Justice concerning the work and behaviour of the offender; the report may be submitted more frequently if necessary. Upon completion of the service, the commissioner submits a final report to the Ministry of Justice. This serves as a basis for the Ministry to draft the final report on completion and submit it to the court. Should certain duties be neglected, the commissioner informs the Ministry without delay; this can also lead to contract termination, which the court should be notified of by the Ministry of Justice.

This Rulebook stipulates the adoption of the following rule books that are already drafted and in effect:

- Rule Book concerning the selection, work, responsibilities, training and registry of commissioners;[9]
- Rule Book on criteria for deterring the compensation to commissioners;[10]
- Guidelines on the offenders' Registry and files.[11]

It also defines the obligations of the Ministry of Justice, which should:
- To establish a list of employers meeting the requirements for executing community service,
- To conclude community service contracts with employers,
- To appoint commissioners,
- To organise training for commissioners.

The last item has not been carried out as such a sanction has not been imposed yet.

- **Recommendation 1**

As it follows from the purpose of community service, the rule book should be more specific in defining that community service is performed in organisations of public interest. In accordance with this and recommendations of CoE suggests that a new rule book be developed, emphasising the concept of community service applied in European countries, and/or that the possibility of introducing a separate law be considered, governing community service and supervision.

2. Current situation in practice

State-level by-laws do not lead further towards the establishment of the system, while the entities do not have by-laws. It should be noted that, within the applicable laws and by-laws in the field of community service implementation, there are certain breakthroughs during the project, since in the BiH Federation there are activities towards developing a rule book governing community service at the cantonal level. RS has not undertaken activities related to community service.

It should be noted that there were some attempts at introducing community service in the BiH Federation, particularly in the Sarajevo Canton, with regard to both juveniles and adults. In addition, there were similar attempts in the Una-Sana Canton, though they do not qualify as a systematic effort based on a strategy and infrastructure; they are, rather, individual initiatives. As there is no administrative structure for implementing community service, courts practically do not impose community service as a sanction.

[9] Official Gazette of BiH, No. 54/07.
[10] Official Gazette of BiH, No. 33/07.
[11] Official Gazette of BiH, No. 52/07.

3. PROPOSED INTRODUCTION OF THE INSTITUTE OF COMMUNITY SERVICE AND ITS IMPLEMENTATION IN PRACTICE

3.1. Proposed amendments to the law

- **Recommendation 2**

Changing legal solutions in the Criminal Code
Since the BiH CC has changed, it is now necessary to harmonise the entity CCs, as already mentioned. One suggestion is to take into consideration the possibility of imposing community service as a sanction for criminal offences with the prescribed sentence of imprisonment of more than one year. Additionally, it could be defined as an independent sentence, not only as a substitute for imprisonment.

- **Recommendation 3**

It is also recommended that the Federation Enforcement Law also include provisions relating to community service.

It is suggested that the enforcement laws:

- clearly define community service and public interest, if not already defined in the criminal code, in accordance with the relevant recommendations of the CoE;
- allow for the possibility of postponing and terminating community service, on similar grounds as those pertaining to the postponement or termination of imprisonment;
- regulate that community service is performed pursuant to an individual plan developed together with the offender, who should also sign it, while other details should be regulated by the rule book.

- **Recommendation 4**

Legislation should also incorporate the option of performing community service when the offender holds a permanent job. In this case, the offender can perform community service in the evening or over the weekend; it should also define conditions under which this can be done.

- **Recommendation 5**

The rule book on community service at the level of BiH should be harmonised with the CoE recommendations[12] and Recommendation 1 herein.

[12] 1. Recommendation (92) 16 on European rules on community sanctions and measures;
2. Recommendation (2000) 22 on improving the European rules on community sanctions and measures.
3. Recommendation (2010)1 on probation rules of the Council of Europe.

Performing community service with a former employer of the offender is not in accordance with either the European practice or the purpose of community service. The rule book should define the rights, duties and communication among the relevant courts, the Ministry of Justice / civil servants, commissioners and offenders.

- **Recommendation 6**

There should be developed an entity rule book on community service, as well as other documents required.

- **Recommendation 7**

There should be a list of types of legal persons engaged in activities in public interest, qualified to offer the option of community service, including the following: public utilities companies, forestry companies, nursery homes, homes for mentally ill adults, non-governmental organisations, soup kitchens, Caritas/Preporod/La benevolencia/Merhamet, Red Cross, organisations dealing with persons with special needs, hospitals and similar institutions.

3.2. Proposed implementation

The only possible implementation at the moment is at the entity level, which would include the following activities:

Step 1

1. Draft a rule book on the implementation of community service, a rule book on the work of commissioners and a rule book on their compensation.

2. Develop a pilot project – preferably in the Sarajevo Canton in the FBiH and the Banja Luka area in RS.
3. Define guidelines or develop an implementation plan for introducing community service, including the following:
    - duties of civil servants,
    - duties of possible community service providers and commissioners,
    - clearly define the manner of communication among the civil servant, commissioner and offender,
    - organise training for all parties involved (prosecutors, courts, civil servants, commissioners),
    - make a list of possible community service providers in the field of social interest, public utilities, medical, humanitarian services and those dealing with environmental protection, as well as with all other activities that the Ministry of Justice considers appropriate for the general and specific purposes of community service (defining whether it will be public companies alone or some private ones can also be included),

- develop elements of offender's individual plan of community service implementation,
- develop elements of the report submitted to the court,
- define the ways and manner of communication with the public in general

4. Appoint a civil servant – an employee of the Ministry of Justice at this stage.

5. Make arrangements with relevant organisations as to the training on community sanctions and measures and their role, and agree on the selection and appointment of a commissioner.

6. Prepare a draft contract and then conclude a contract (Appendix 1).

7. Organise meetings with courts, prosecutors and other relevant factors, and introduce them to the guidelines for the implementation of community service, then prepare and implement their training.

8. Develop and establish registries and files for civil servants and commissioners, define their maintenance and the exchange of data and documents (Appendix 2).

9. Organise training of civil servants and commissioners.

10. Inform the public.

Step 2

An analysis of a pilot project and a proposal for improving the implementation and possible amendments to relevant legal documents.

Step 3

Implementation at two more locations.

Step 4

An analysis of the implementation at the selected locations.

Step 5

Further development leading to the introduction at all the locations in the entities, also implying the employment of additional staff and raising additional funds, which will lead to the establishment of a probation service.

4.2. SUSPENDED SENTENCE WITH SUPERVISION

While Suspended Sentence is one of the community sanctions and measures that is most frequently imposed in practice; Suspended Sentence with Supervision is seldom or never imposed. One of the reasons is probably the inability of institutions to implement the required supervision over the offender.

The purpose of suspended sentence with supervision is also not to exclude the offender from the community and, with the help and supervision of the community, make the offender raise awareness of and the sense of responsibility for their behaviour. Liberty of the offender is restricted as a result of obligations imposed by the court, but the person still remains in the community. Furthermore, the imposition of a supervision element means that that the offender is less likely to commit further offences as supervision provides elements of both control and support.

1. Legal grounds

- **Criminal Code**

Suspended sentence and suspended sentence with supervision are regulated by the BiH Criminal Code (Article 58-67), the RS CC (Article 48 – 53) and the FBiH CC (Article 62 – 70).

With regard to **suspended sentence**, there are no significant differences among them and this sentence can be imposed if the prescribed punishment is up to two years or a fine. The duration of supervision cannot be less than one year or longer than five years.

In addition to suspended sentence, the court may also impose some other obligations:

- to restitute the gain acquired by perpetration of criminal offence,
- to compensate for the damage caused by the criminal offence,
- to fulfil other obligations stipulated by the criminal code (usually referring to security measures, mandatory psychiatric treatment, restriction of calls, activities or duties, confiscation of objects).

Suspended sentence with supervision is a form of suspended sentence and is meant for persons whose family and social circumstances can stimulate further criminal offences, which is why it can hardly be expected that a mere warning and a possible punishment will be sufficient to prevent repeated offence and secure social reintegration of persons who need special help and protection to achieve these goals.

Elements of supervision can include the following obligations:

a) treatment in an adequate health institution,
b) refraining from intake of alcohol or drugs,
c) attending particular psychiatric, psychological and other counselling services and acting in accordance with their instructions,
d) training for a certain profession,

e) accepting an employment corresponding to the offender's qualifications and abilities,
f) disposing with the salary or other income and property in an appropriate way and in accordance with marital and family obligations.

The court may impose one or more of the above obligations on the offender, while the duration of supervision cannot be shorter than six months or longer than two years. The court may revoke supervision even before its defined term if certain obligations are completed.

Should such obligations not be met, the court may:

- issue a warning,
- replace the previous obligations with another ones,
- extend the duration of supervision,
- revoke suspended sentence and re-sentence

➢ Law on enforcement of criminal sanctions

The enforcement of supervision imposed with suspended sentence is defined in Section VIII Article 199 – 206 of the BiH Enforcement Law, while the entity enforcement laws do not define the measures of supervision.

When referring to the purpose of supervision from Article 66 of the criminal code, the BiH Enforcement Law, Article 199, states that it represents help, care, monitoring and protection during the term of suspended sentence. The BiH enforcement law further stipulates that a social welfare body is in charge of implementing supervision according to the place of residence of the offender, while the relevant costs are covered by the municipality, which will be provided with adequate funds and other resources, without mentioning who is responsible for their provision.

The court forwards its judgement to the social welfare body which, within 15 days, introduces the offender with his obligations and undertakes activities with regard to the type of measure. The municipal social welfare body also cooperates with the offender's family. The social welfare body submits relevant information once in 6 months or whenever the court requests so. Should the offender not consent to or not fulfil his obligations, the social welfare body notifies the court; when the same body assesses that the set goal is achieved, it also notifies the court accordingly.

2. Current situation in practice

As already mentioned, the court seldom imposes suspended sentence with supervision, since social welfare bodies do not carry out tasks related to supervision. In addition, there are no by-laws governing the enforcement of suspended sentence with supervision.

It would therefore be necessary for the competent ministries of justice and of social work to consider whether the current legal solutions are feasible at all. If they are not, some other solutions should be found. If they are, stronger legal solutions and relevant by-laws are then required.

3. PROPOSED INTRODUCTION OF THE INSTITUTE OF SUSPENDED SENTENCE WITH SUPERVISION AND ITS IMPLEMENTATION IN PRACTICE

3.1. Proposed amendments to the law

- **Recommendation 8**

With regard to relevant systems in European countries, social welfare bodies are not considered to be implementers of these activities for adult offenders; they are, rather, within the competence of probation services, which are part of the judicial system, while social welfare bodies offer support to persons serving community sanctions and measures who are in social need.

- **Recommendation 9**

In accordance with a decision resulting from the above, it is necessary to develop guidelines for introducing suspended sentence with supervision into practice and, consequently, introduce the required changes to the BiH Criminal Code and the Enforcement Law. The FBiH and RS enforcement laws should define suspended sentence with supervision, considering the relevant recommendations of the CoE, and harmonise the applicable solutions. It is also necessary to specify that a rule book approved by the ministry of justice will regulate serving suspended sentence with supervision in more detail.

Laws and by-laws should regulate in detail the whole procedure of the enforcement of suspended sentence with supervision, starting from the definition of competent enforcement authorities, their rights and duties, the rights and duties of the offender, supervision implementation programmes, participation of the offender, their signing an individual plan, deadlines for relevant activities, competencies of other participating bodies, obligations of the parties involved in case they fail to observe their duties, notification of the court, etc.

- **Recommendation 10**

In the criminal code, it is necessary to define and stipulate that elements of supervision imply the following obligations:

1. Obligations imposed on every person with suspended sentence:

    - to indicate the intended place of residence and, in case of its change, notify the officer in charge of supervision;
    - report to the police station in accordance with the place of residence;

- not to leave the BiH or the entity territory (perhaps mention exceptions to this).

2. Obligations imposed on an individual basis, considering the needs of the offender (discretionary, the court may or may not impose one or more, on a case-by-case basis):
   - training for a certain profession or continuing of training within the old one;
   - obligation to work or seek for a job (state what happens in the case of retired persons or women with small children to take care of);
   - a continuation of treatment in a health institution;
   - attending to psychological or other counselling service;
   - undergoing a rehabilitation programme with regard to drugs or alcohol addiction;
   - prohibition of visiting certain places;
   - prohibition of associating with certain persons;
   - prohibition of approaching the victim or another person;
   - obligation to live in the approved place of residence, with the option of changing this address only upon an approval by the officer in charge of supervision (usually applying in exceptional and special cases);
   - offering compensation or damages to victims;
   - reporting on a regular basis to the supervision service in accordance with the individual plan.

Electronic monitoring can be used for the purpose of supporting or implementing any of the above measures.

3.2. Proposed implementation

Considering the relevant information, it is considered that suspended sentence with supervision cannot be implemented in practice without establishing a probation system.

- **Recommendation 11**

It is suggested that a pilot project be launched, which would require a civil servant within the competent ministry, who would be in charge of the project, in order to gain relevant experience through its implementation.

4.3. CONDITIONAL RELEASE WITH SUPERVISION

This paper also discusses conditional release with supervision and its possible implementation in practice in accordance with the CoE Recommendation on conditional release (parole), without considering the relevant requirements or the work of the conditional release commission, but dwelling on the establishment of the institute of conditional release with supervision, and its implementation in practice.

Conditional release with supervision is a measure representing a continuation of sentence serving in the community, and its goal should be helping offenders to make as smooth transition as possible from their life in prison to that in the community with the aim of minimising the risk of further offences. Conditional release differs from temporary release as it includes individualised conditions that are imposed and must be implemented in the community with the help and supervision of the community.

1. Legal grounds

- **Criminal Code**

All three criminal codes, BiH Article 44- 45, the FBiH Article 45-46, and RS Article 108 – 109, stipulate conditional release under only one condition that the offender does not repeat a criminal offence. Similarly, they stipulate the revocation of conditional release should a new offence be committed. The criminal codes do not stipulate conditional release with supervision.

- **Law on enforcement of criminal sanctions**

In its Article 159 the RS Enforcement Law[13] stipulates that, once in 15 days, a person granted conditional release must report to the relevant police station and the social welfare body in the place of residence. These bodies must inform the relevant prison in case of failure to report during a certain time, while this institution, in cooperation with the above bodies, monitors the process of conditional release and the achievement of its purpose.

During conditional release, the offender is not allowed to leave the territory of RS or BiH. Article 160 stipulates that, if the offender fails to meet (fulfil) his obligation during conditional release, if they violate public law and order with elements of violence, and in other cases when it is assessed as justified, upon a proposal of the head of the institution, the competent minister may revoke the decision on conditional release. Upon receiving the revocation, the offender must report to the institution in order to serve the rest of their sentence. The offender may appeal the decision on revocation of conditional release to the minister, but the appeal does not hold the execution. If the

[13] Official Gazette, No.12/2010.

offender fails to report to the institution, the institution must issue an accreditation on arrest warrant.

It follows that the minister issues the decision on revocation and, at the same time, deliberates on an appeal against this decision, which is not in accordance with the relevant European standards, which is why it is **recommended** that this be changed.

The BiH and FBiH enforcement laws do not have the solutions found in the RS Enforcement Law.

2. Current situation in practice

As already mentioned, supervision is not imposed with conditional release in practice as there are no legal possibilities. The new RS Enforcement Law stipulates reporting to the police station and social welfare body as a possible form of supervision. There is a plan to organise meetings with the competent ministries and to draft a memorandum of understanding, as well as documents pertaining to the implementation of supervision.

3. PROPOSED INTRODUCTION OF CONDITIONAL RELEASE WITH SUPERVISION AND ITS IMPLEMENTATION IN PRACTICE

3.1. Proposed amendments to the law

- **Recommendation 12**

With regard to relevant systems in European countries, social welfare bodies are not considered to be implementers of these activities for adult offenders; they are, rather, within the competence of probation services, which are part of the judicial system, while social welfare bodies primarily offer support to persons serving community sanctions and measures who are in social need.[14]

- **Recommendation 13**

Amendments to the law and introducing conditional release with supervision
The applicable legislation should define conditional release with supervision, so as to follow the above mentioned Recommendation of the CoE. Item 9 of this Recommendation states that "In principle, conditional release should also be accompanied by supervision consisting of help and control measures. The nature, duration and intensity of supervision should be adapted to each individual case. Adjustments should be possible throughout the period of conditional release." These measures of help and control should also be defined in the laws.

[14] This distinction is made only as far as adult offenders are concerned. In many European countries Social Welfare agencies supervise juvenile offenders as part of their duties as welfare is an important component of this supervision.

Elements of supervision include the following obligations:

1. Obligations imposed on every person with conditional release (mandatory for all such persons):

   - to indicate the intended place of residence and, in case of its change, notify the officer in charge of supervision;
   - report to the police station in accordance with the place of residence;
   - not to leave the BiH or the entity territory (perhaps mention exceptions to this).

2. Obligations imposed on an individual basis, considering the needs of the offender (discretionary, the court may or may not impose one or more, on a case-by-case basis):
   - a continuation of measures prescribed by the imprisonment programme,
   - training for a certain profession or continuation of training within the old one;
   - obligation to work or seek for a job (state what happens in the case of retired persons or women with small children to take care of);
   - a continuation of treatment in a health institution;
   - attending to psychological or other counselling service;
   - undergoing a rehabilitation programme with regard to drugs or alcohol addiction;
   - prohibition of visiting certain places;
   - prohibition of associating with certain persons;
   - prohibition of approaching the victim or another person;
   - obligation to live in the approved place of residence, with the option of changing this address only upon an approval by the officer in charge of supervision (usually applying in cases where there is a possible risk to a victim or victims);
   - offering compensation or damages to victims;
   - reporting on a regular basis to the supervision service in accordance with the individual plan

Electronic monitoring can be used for the purpose of supporting or implementing any of the above mentioned measures.

- **Recommendation 14**

Duration and obligations
The law should stipulate the duration and the possibility of changing imposed obligation, as well as their termination. This implies that the offender can fulfil the imposed obligations even before the term of conditional release expires, which should be stipulated by the law; it can also be that case that the offender cannot fulfil the imposed obligation within the term of conditional release, and this should be regulated and the third possibility is that the

imposed obligations are amended in accordance with the offender's personal circumstances.

- **Recommendation 15**

It is suggested that the law defines a body determining these obligations – probably a commission for conditional release, which must have adequate information at its disposal in order to make a decision regarding the above mentioned obligations.

- **Recommendation 16**

Revocation procedure and failure to fulfil obligations
The applicable legislation should clearly define the consequence of the failure to fulfil obligations imposed by the competent body and, when necessary, initiate the procedure for revoking conditional release with supervision when the offender fails to fulfil his obligations, relying on the Recommendation on conditional release (parole).

- **Recommendation 17**

It is also necessary to define bodies for implementation, i.e. bodies in charge of implementing conditional release and measures of supervision (infrastructure).

- **Recommendation 18**

There should be developed a rule book on conditional release with supervision, as well as other documents required.

3.2. Proposed implementation

On the grounds of the adopted amendments to the applicable legislation and in accordance with the above mentioned recommendations, the following is proposed:

Step 1

An agreement between the ministry of justice and ministry of interior/police stations about the reporting of persons on conditional release, as well as about the records police stations should keep and communication with institutions that such persons were released from, i.e. develop an implementation system.

Step 2

Define a further structure within which the implementation and other obligations will be possible. The following are only some possibilities, the development of which can lead to the establishment of a probation service:

- Appoint a prison officer in charge of supervising offenders on conditional release, implying persons released from the prison in question or from some other prison but living in the territory covered by the prison in question.
- Alternatively, to employ a civil servant in the local community in charge of supervising and helping offenders on conditional release from the community in question, in accordance with individual plans for conditional release with supervision.
- Designate a civil servant within the ministry of justice who would coordinate the work of prison officers and civil servants in the community.
- Define the role of other institutions that will cooperate in the implementation of measures – social work centres, healthcare institutions, employment bureaus and other relevant institutions, and plan coordination meetings and activities at the level of the local community.

Step 3

Pursuant to the decision referred to in Step 2, initiate a pilot project: select local communities in which the pilot project would be implemented.

Step 4

Analyse the pilot project and propose its improved implementation and possibly change relevant legal documents.

Step 5

Expand the implementation to other selected locations.

Step 6

Further development leading to the introduction at all the locations in the entities, also implying the employment of additional staff and raising additional funds, which will lead to the establishment of a probation service.

4.4. THE ROLE OF THE SOCIAL WELFARE SYSTEM IN THE SYSTEM OF COMMUNITY MEASURES AND SANCTIONS

Social protection is focused on the detection, analysis, prevention and monitoring of social risks, cases and problems, or causes leading to situations of special social need of individuals, families and social groups, as well as on undertaking legally defined measures and activities towards their elimination or alleviation. This section of the paper focuses on the role of the social welfare system in the society as a whole, emphasising community measures and sanctions treated in the paper.

4.4.1. Legal framework

As an integral part of social policy, social welfare is based on the BiH Constitution (Annex IV, General Framework Agreement for Peace in BiH), entity constitutions, the Brčko District Statute and relevant laws:

The BiH Federation:
- Law on basic social protection, protection of civil victims of war and protection of families with children[15]
- Cantonal laws on social protection (10)

RS:
- Law on social protection[16]

The Brčko District, BiH
- Law on social protection of the Brčko District[17]

According to the BiH Constitution, the field of social protection is in the exclusive competence of the entities, while the coordinating role of the BiH Ministry of Civil Affairs, the Department for labour, employment, social welfare and pensions is defined by the Law on Ministries and Other Administrative Bodies of BiH.[18]

The field of social protection is within the competence of the Federation Ministry of Labour and Social Policy, in RS of the Ministry of Health and Social Welfare, while in the Brčko District in that of the Department for health and other services of the Brčko District Government.

In the BiH Federation, the direct provision of social protection is done through 10 cantonal ministries of labour, social policy, refugees and displaced persons, through the work of 79 local services performing services within the field of social protection (54 social work centres and 25 services for activities concerning social protection) and two cantonal social work centres – in the Sarajevo Canton and Bosna Podrinje Canton. In RS, 45 social work centres undertakes activities concerning social protection.

Legal framework related to community sanctions and measures and the role of social work centres

In accordance with the BiH Enforcement Law, it is stipulated that the measures of supervision are implemented by the social protection body according to the place of residence of the offender, while the relevant costs are covered by the municipality, which will be provided with adequate funds.

In addition, the law defines the activities undertaken by social work centres, whose nature depends on the type of measure, and they imply introducing the offender to their obligations during the duration of measure, cooperation with the offender's family in order to improve the family circumstances, as well as

[15] Official Gazette of the FBiH, No. 36/99, 54/04 and 39/06.
[16] Official Gazette of RS, No. 5/93, 15/96, 11/03 and 33/08.
[17] Official Gazette of the Brčko District, No.1/03,4/04, 19/07 and 2/08.
[18] Official Gazette of BiH, No. 5/03, 30/03, 42/03, 26/04, 42/04, 45/06 and 88/07.

reports on the results of the measure in question and undertaking relevant activities if the goal is not achieved.

4.4. 2. Rights under social protection and social work centres

Rights under social protection include financial and other material contributions and offering services of social protection.

Beneficiaries in terms of the rights and services of social protection are minors and adults in special social need, particularly the following ones:

- Persons without income and persons unable to work who are without the necessary sustenance and are unable to provide sustenance in a different manner;
- Persons and families in social need who, due to specific circumstances, need an adequate form of social protection, which refers to persons or families in social need due to, among other things, return from the medical treatment, release from prison or after completed execution of correctional measure;
- Persons with socially negative behaviour, prone to idling, loitering, begging, prostitution, alcoholism, drug abuse and other forms of socially negative behaviour;
- Persons exposed to abuse and domestic violence.

In order to perform their duties, social work centres cooperate with citizens, local communities, government authorities and institutions, civil associations, judicial authorities, police stations and other bodies that can contribute towards better social work and social protection; centres also encourage voluntary work.

Most social work centres face difficulties in achieving their goals and tasks, which are usually related to insufficient human, material and financial resources. THE work of social work centres is funded from municipal budgets in RS, and in the BiH Federation from the respective budgets of municipalities and cantons, but these funds are not sufficient to cover all the needs of registered beneficiaries.

4.4. 3. Possible role of social work centres in the probation system

Considering the fact that the social welfare system is based on the principle of voluntarism and that social work centres do not have the instrument of coercion, and with regard to the above recommendations, there is no realistic possibility to implement suspended sentence with supervision and conditional release with supervision in the form of reporting to social work centres. Even though these centres, within their defined competencies, regularly cooperate with judicial authorities and police stations, they cannot be in charge of supervision, monitoring and security within the implementation of the above mentioned sanction and measure because these activities are not part of the basic principles of social protection, which is also confirmed by how the system is organized in other European countries.

Using their existing resources (human and material) and professional methods (social work, psychosocial support, etc.), social work centres can contribute to better reintegration of offender into society, provide psychosocial support to their families and cooperate with future probation officers in terms of overcoming problems related to social need of treated persons and their families. To achieve their goals, social work centres must have good cooperation with all the segments of the local community, including future elements of probation activities that will lead to establishing probation services. On the other hand, in accordance with the relevant CoE recommendations, probation services must also cooperate with social work centres in order to achieve effective implementation of community sanctions and measures.

V. POSSIBLE FURTHER DEVELOPMENT OF THE IMPLEMENTATION OF COMMUNITY SANCTIONS AND MEASURES IN BiH

It follows from the above discussion that some minor steps and pilot projects can commence, but the true introduction of community sanctions and measures requires the establishment of proper probation services. Previous experience concerning the introduction of community sanctions and measures and establishment of probation services, particularly in East European countries that have introduced them recently, shows that, without a firm political decision, adequate legislative solutions and allocation of human, material and financial resources, it is not possible to establish a probation system and probation services. This is a road the competent authorities in BiH will also have to take.

Legislative solutions

When deciding on the introduction of a developed and broad system of community sanctions and measures at different stages of criminal proceedings – as defined in different CoE recommendations, it is necessary to discuss some key strategic issues:

- What community sanctions and measures will the community have at its disposal?
- For what criminal offences and for what offenders might be used?
- Who will be responsible for their implementation?

The introduction of a wide range of alternatives into criminal legislation requires that certain conditions be met, including the establishment of adequate probation services.

With regard to community service, suspended sentence with supervision and conditional release with supervision, it can be said that community service is considered to be the principal punishment, as defined in the criminal code, while suspended sentence and suspended sentence with supervision are defined as warning measures, the purpose of which is to warn the offender

and threaten them with possible punishment (suspended sentence). If we look at the difference between sanctions and measures as accepted in the relevant CoE recommendation, we should then discuss the position of suspended sentence with supervision, which is a sanction related to public interest combining warning and rehabilitation.

The place of conditional release among punishments is somewhat unusual and it is difficult for conditional release to qualify as a measure, as the Recommendation (2003)22 defines conditional release as "the early release of sentenced prisoners under individualised post-release conditions," and "a continuation of serving sentence in the community". In accordance with the recommendation suggesting that, in their policies, legislation and practice concerning conditional release, the governments of member states be guided by the principle in the recommendation, these changes should also be approached in this manner.

With regard to security measures, particularly mandatory treatment of addiction, it is also necessary to define it in the content of supervision, because in addition to suspended sentence, the court may also impose mandatory rehabilitation with regard to drug addiction if such thing is necessary, while its implementation is monitored by the probation service in cooperation with the local healthcare service dealing with drug addiction rehabilitation. The same applies to alcohol addiction.

- **Recommendation 19**

It is recommended that the competent ministries of justice take into consideration the possibility of introducing a developed system of community sanctions and measures into criminal legislation.

As the experience and practice of European countries show, the implementation of community sanctions and measures requires the establishment of the probation system and probation services in charge of the above implementation. The following section offers certain suggestions and guidelines in terms of preparing the necessary professional definitions (title of the service, organisation, working methods, mission, etc.) and the relevant legal grounds. At the same time, it is necessary to provide adequate human resources and allocate financial resources required for effective implementation.

- **Recommendation 20**

It is recommended that the competent ministries take into consideration the possibility of introducing probation services.

VI. ESTABLISHING THE PROBATION SERVICE IN BIH

6.1. Introduction

Currently in legislation there is no provisions about the probation service In this document we are are proposing a guidalnce although, as with all probation services, operational arrangements will necessarily take account of local conditions.

There follows some initial proposals for the establishment of a probation service that would facilitate implementation of the two sanctions and one measure that are already in the State Criminal Codes and Criminal Procedure Codes. Detailed implementation of these three new community options requires consideration of the vision, aims, values and priorities (short term and medium term) of a BIH Probation Service that will operate to European standards and have the capacity to develop and adapt to further duties and powers as the legal framework develops. These proposals in this paper are therefore offered as a starting point for further discussion of the essential building blocks of a probation service.

Implementation of the sanction and measures already in the law will not, of course represent the creation of a fully fledged Probation Service but does provide the means in law for the establishment of a credible system. This can create a 'seeing is believing' dynamic that will encourage additional enabling legislation and the commitment of the necessary resources.

6.2. Vision

The vision of the BiH probation service could be something along these lines :

"To work in partnership with others to rehabilitate offenders and reduce crime, enhance public protection and community safety, and make reparation to victims and society through providing accessible and effective services to offenders and the community".

6.3. Aims and Values

Key aims are:

- To set up a sustainable Probation Service in Bosnia-Herzegovina, in order to supervise offenders in the community
- To provide the efficient and effective supervision of offenders sentenced by the Courts to community sanctions or released on licence and under supervision from imprisonment;
- To work with others to protect the public, reduce re-offending by those supervised, and to improve re- integration of offenders into society;
- To reduce the number of offenders who return to imprisonment ;

- To provide reparation to victims and to society[19].

Values

The work of the Probation Service will be underpinned by the following values:

- Treating people fairly, openly and with respect
- Achieving key objectives (protecting the public and reducing re-offending) through a partnership approach with other agencies
- Retaining a focus on victims and potential victims of crime
- Supporting and developing staff to work to maximum effect
- A belief that offenders have the capacity to change and can be rehabilitated to make a positive contribution to society
- A commitment to valuing diversity and acting in a non-discriminatory way
- Achieving effectiveness and value for money

6.4. Immediate Priorities

- Review, amend and further develop the relevant legislation
- Agree launch date for the implementation of the existing sanctions and measures
- Establish a Probation Service infrastructure during …….for to enable a fully operational service by the beginning of ……..
- To have recruited a minimum of …. probation staff by the end of …….
- To provide induction training and basic practice guidance for all staff, and to have developed and made available a modular training programme.
- To establish a framework for developing work with partner agencies

6. 5. Priorities for the next two years period

Medium-term priorities are intended to position the probation service as a modern public service organisation and could include:

- Developing detailed strategies for **Operations**, including standards and procedures, for **Human Resources**, including recruitment and selection, and learning and development, for **Partnership,** including protocols between Criminal Justice agencies and other State, NGO and Private Sector agencies and for **Communications** with all stakeholders including the public. [20]

[19] This is subject to the establishment of the necessary infrastructure for a mediation/reparation scheme which will require additional resources.

[20] The detail of these developments will also reflect the decisions made about the structural location of the organisation eg directly reporting to to the Ministry of justice or part of the prison service administration.

- An annual Business Plan can detail the strategies and include measurable objectives for each year, and should include actions for the Ministry of Justice, The State Prosecutors Department and Regional Teams.

- The use of existing and newly developed IT systems and the deployment of IT should be maximised (e.g. through use of an electronic case record system and distance learning methods) within the available resources

- The Probation approach can be expanded and developed to support the key Aims. e.g. by the introduction of curfew (supported by Electronic Monitoring) and by developing approaches such as Drug Treatment and Testing. The exact developments will be determined by evidence of need and the capacity and resources available.

- Identifying further opportunities to draw on EU Social and Structural funding should be an integral part of the medium-term strategy

6.6. Operations: Managing Risk and Reducing Re-Offending

The building blocks of Probation work

The BIH Probation Service should introduce methods of work with offenders that are aimed to manage the risk of harm and reduce the likelihood of re-offending. These will apply to all probation work, including the three elements that are discussed in more detail here.

The key elements of this approach are the Assessment, Planning and Review of each case, within the context of strict enforcement of the Court Order or Prison Licence and Standards for Probation work. The Plan for each offender will focus on risk management and the required Interventions to reduce the likelihood of re-offending. In the case of Community Service the plan will also take account of the nature of the offenders work-skills and the suitability of work placements.

Assessment: A structured assessment tool can be used to determine the level of risk and the required level and nature of intervention. This assessment can also be used by the probation service to inform the contents of any court reports and pre-release reports required by the Prison Authorities for Parole consideration.

Planning and Review: On the basis of the assessment a Sentence Plan should identify exactly what interventions will occur within the limits set by the sanction or measure , in what order and with what frequency of contact. The Review process is required because risk is dynamic and can change over time.

Enforcement: A strict protocol for enforcement is required. This makes the rules clear to all and provides a means of reassuring the sentencing court, the victim(s) [if any] and the wider public.

Standards: Standards to prescribe the minimum levels of supervision contact or hours of Community Service to be undertaken per week, together with the sanctions for non-compliance should be developed. These may be differentiated by Risk, with higher risk offenders having more intensive levels of contact. Community Service minimum or maximum hours weekly /annually can be differentiated depending on the employment status of the offender.

Interventions: There are international research findings on Interventions aimed at reducing recidivism could be transmitted upon request, as example. Generally speaking, it is a combination of interventions that produce results, and the role of the Probation case manager in support , boundary-setting and relapse prevention is crucial.

Management : The role of the Probation management team will be to develop and promote the service with key stakeholders. Over time, robust data collection and management information systems are required to enable resource allocation, quality assurance and aggregation of data for reporting on performance. Regular and structured supervision of all Probation staff, including review of case records is a key management role.

Inter – agency co-operation and Risk

An essential element of effective Probation work is close co-operation with a wide range of agencies and actors. In general terms this is addressed in the section on Partnership below, but there is a particular requirement to ensure that Probation, Police, Prisons and others share information and co-ordinate their actions with offenders who pose a risk of harm, either to an identified victim or to the public at large. In practice these will normally be those offenders who have served a prison service but they may be offenders who are dangerous even though only convicted of a minor offence.

6. 7. Human Resources

The Human Resources Strategy will aim at ensuring that staff are recruited at the appropriate standard , trained to do the job, supported in working to their full potential, their skills are properly recognised and fairly rewarded and that there are pathways for advancement.
Candidates for Probation Officers are expected to have completed a university degree in one of the following subjects: Social Sciences, Sociology, Social Work, Psychology, Philosophy, Pedagogy, Educational Sciences, Defectology or Law (with admittance into BAR). The Probation Officer/Commissioner is expected to fulfill the following tasks:

- To provide judicial authorities with verified information on the offender's personal and social situation and so assist them in determining the most appropriate sanction and the related obligations
- To supervise offenders sentenced to a community sanction or measure

- To promote, in cooperation with all other interested parties, the social reintegration of offenders serving their sentence in the community or those having been granted conditional release
- To perform any other tasks that may be required by current laws and regulations.

The role and function and therefore the recruitment requirements of persons who will supervise community service work will have to be elaborated if these are to be direct employees rather than third parties in other agencies. In the latter case probation officer duties can include liaison with community service placement providers/commissioners.

The strategy will be based on the principle of equality of opportunity and will include establishing objective and transparent procedures, for staff of all grades . Its scope should include:

- Recruitment and Selection
- Appraisal
- Opportunities or Promotion to positions of enhanced responsibility or reward
- Learning and Development

The strategy should include actions and responsibilities for all staff including the management and supervision roles of Managers.

6. 8. Partnership Arrangements

The Probation Service cannot be effective without close partnership arrangements with a wide range of other agencies and actors. The Probation Service has key partners in the Criminal Justice System, other Government departments and the Non-Government Organisation (NGO) sector at both national and regional level. In addition, in some areas of work (e.g. electronic monitoring) the private sector has a key potential role.

A Partnership Strategy should be developed in consultation with these other bodies.

Reference to partnership working for high – risk offenders has already been made. Wherever possible, probation processes should be developed in close liaison with the Police and Social Welfare Centres for Community Order cases, and with the Prisons for licence cases in the latter case to ensure the effective management of offenders “through the gate”.

Examples of areas in which wider partnerships could be developed include work on key Interventions such as drugs, employment, literacy and numeracy.

6.9. Communications

A Communications Strategy should be developed for engagement with all partners, stakeholders and the public on the why, what, how, when and where

of Probation. It will be essential to enlist early support through effective communications, using a variety of methods and media. Examples might include a high-level media launch for Community Service and the production of simple, high quality explanatory leaflets for courts and offenders and an annual report with facts , figures and illustrative case examples.

6.10. Resources and Business Case

The Business Case for a Probation Service is essentially a cost-effective way of responding to less-serious offences, it can reduce recidivism and protect the public from harm. More work is required to identify a detailed staffing and budget plan.

6.11. Targets and Performance

Targets should be set for all aspects of Probation operations. For the first year these can only be set for estimated levels of performance but that will establish a baseline. The Targets will be a mixture of inputs, outputs and outcomes. For example, an input target could be the % of offenders seen by a Probation Officer within x days of a Court Order being made. An output target could be the % of Offenders who successfully complete a planned Intervention such as drug treatment and an outcome target would be the number of prisoners released on licence under Probation Supervision who complete the licence period without a further recorded offence.

Targets can only be set where the data to measure results can be accurately collected and aggregated, but they are essential for the credibility of the Probation Service.

Targets can also be set in the other identified priority areas: HR, Partnerships and Communications. For example: the % of recruited staff who complete induction training within x weeks, the establishment of regional consultative bodies and the timely production of an Annual Report. This approach would help drive a performance culture into all aspects of the new Probation Service.

6.12. Next Steps

If the requirements for a new service as outlined in this paper are broadly agreed by the WG and the necessary budget approval is given by the BiH Authorities further detailed work should be undertaken in the following areas:

1. Agreement on detail of organisational and delivery structure and accountabilities at national / local level
2. Determine detailed competences and reward package for Probation Staff
3. Identification of office accommodation and office resources (IT, telephone etc)
4. Recruitment of Probation staff
5. Design of Induction Training

6. Discussions with key stakeholders on timetable and detail of first Community Order and Licence cases (will there be a staged/pilot roll-out or a big- bang approach?)
7. Design of case records and related training
8. Development of national standards
9. Development of performance framework
10. Consultation on partnership framework
11. Initial work on 'menu' of Interventions
12. Consideration of content and timing of any formal probation reports to Courts or parole authorities.

VII. SEVERAL IMPORTANT POINTS CONCERNING THE INTRODUCTION OF PROBATION SERVICE

7.1. Guidelines

The following section offers certain suggestions concerning the introduction of community sanctions and measures into practice, points to pay special attention to, which was also found useful with the similar introduction in the neighbouring countries.[21]

1. The importance of appreciating that the potential success of community sanctions and measures depends on how well they are implemented from the outset. This means that the objectives behind the introduction of community sanctions and ensures must be clearly articulated and that their implementation must be closely monitored, reviewed, evaluated and revised in light of how well key objectives are being met. Cooperation with other agencies is crucial and it is necessary to establish cooperation with other agencies when drafting a plan for introducing community sanctions and measures and developing a service in charge of their implementation and application.

2. It is necessary to develop a strategy for introducing community sanctions and measures, and providing the required infrastructure. The basis for this are relevant provisions that can be found in the applicable enforcement laws, which could govern the processes involved in their implementation and specific measures aiming at reducing the prison population, as well as by-laws required for the establishment of the service itself, conditions to be met and procedures to be conducted while implementing community sanctions and measures.

In this regard, it is important to organise joint panel discussions, roundtables and other forms of training for all the parties involved in their application and implementation.

[21] CoE Report on the system of alternative sanctions and probation in Serbia, Strasbourg, November 2006.

3. Consideration also needs to be given to how community sanctions and measures are used. Across many jurisdictions there are a broad range of sanctions and measures used as a substitute for imprisonment. Countries vary in how widely and in what way these sanctions and emasures are used. Sometimes they do in fact appear to act as substitutes for prison sentences. Often, however, they are used as an alternative to fines.

This does not happen when a range of sanctions other than imprisonment can be imposed on offenders who fail to comply with a condition of their community sanction. In such cases, offenders will only be returned to prison when the nature of the breach itself justifies a prison sentence and not when a relatively minor transgression has occurred. This practice is consistent with R (1992) 16 Rules 10 and 86,

4. In some jurisdictions the administration and enforcement of community sanctions and measures is the responsibility of a distinctive probation service. The long term strategy for implementation is needed and in this document we provide some guidelines.

5. It is therefore necessary to develop a public relations strategy that will provide accurate information to the public about the nature and effectiveness of community sanctions and emasures. This is consistent with R (1992) 16, Rule 44, which recommends that, “Appropriate information about the nature and content of community sanctions and measures as well as various ways in which they are implemented shall be disseminated so that the general public…can understand them and perceive them as adequate and credible reactions to criminal behavior”, and with R (2000) 22, para. 18, which recommend that, “The introduction of new community sanctions and measures into legislation and practice should be accompanied by vigorous public relations campaigns with a view to winning public support”.

6. International experience and evidence demonstrates that community sanctions and measures are more likely than prison sentences to promote offender rehabilitation and enhance community safety. In addition, alternative sanctions are at least as effective, often more so, in reducing offending behaviour as short term prison sentences and have a greater cost-effectiveness. The lessons from evaluations of the international experience with community sanctions and measures which are of direct relevance to the implementation process in BiH are commented on briefly in what follows.

It is necessary to have evaluation in order to identify good practice and effective initiatives with regard to types of criminal offenders – commitment to ‘whatever is effective’.

- Judicial involvement

First, the judiciary should be closely involved in the design and implementation of community sanctions and measures. This is recommended in R (2000) 22, para. 7 which recommends that, “Judicial authorities should be involved in the process of devising and revising policies on the use of

community sanctions and measures, and should be informed about their results, with a view to ensuring widespread understanding in the judicial community of their nature." In addition, the international experience shows that there is a need for an 'attitudinal readiness' on the part of the judiciary before implementation and for subsequent continuing professional development training.

International experience suggests that the nature of the training provided is crucial; the content of judicial and prosecutor training and its purpose should be aligned closely with the objectives of introducing community sanctions and measures, how they will be enforced and how their effectiveness will be assessed.

- Range of community sanctions and measures

There should also be an adequate range of community sanctions and measures available on all stages of criminal justice process. The scope of community sanctions and measures in BiH could be expanded to include e.g. treatment orders as conditions of probation for those who – due to their alcohol or drug abuse – do not fulfill the conditions of community service. A large number of distinctive types of sentence are not, however, absolutely necessary. With a strong 'service' responsible for the administration and enforcement of community sanctions and measures it is possible to have an effective system simply through the use of fines, suspended sentences (with or without supervision), community service and victim offender mediation, reconciliation and/or reparation.

7. Phased implementation of alternative sanctions

There should be the intention to introduce a pilot project in BiH. This is a constructive way forward and is consistent with R (2000) 22, para. 4, which states that, "Provision should be made for introducing new community sanctions and measures on a trial basis" and R (2000) 22, para. 28 recommends that, "Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures."

7.2. PILOT PROJECT

We will offer several recommendations in order to make the pilot project as effective as possible.

- **Recommendation 1**

A Working Group, composed of representatives from the Ministry of justice, Ministry of labour and social and civil affairs, health, the judiciary, the prosecuting authority, social welfare centres, and any other relevant agency concerned with the implementation of community sanctions and measures, should draw up the detailed parameters of the pilot project, including objectives, procedures, operation and staff. Each member of the staff will give

their separate contribution, but it is important to identify the field of work where it is vital to act together.

Target Groups - The manner in which offenders will be identified as suitable for the different types of community sanctions and measures should be specified. Considerations here include who will be responsible for making assessments, how these assessments will be made, and how the results of assessments will be communicated to the judiciary.

Monitoring and Evaluation
The pilot project will require to be monitored to provide ongoing feed-back to the Working Group about the process of implementation, identifying where the project is proceeding well and where problems are emerging. In light of these assessments, which should be provided at regular intervals, the Working Group will be able to make adjustments to the project to enhance its potential to meet its objectives. Evaluation should also ensure a detailed assessment of the required resources and feasible deadlines for introducing alternative sanctions throughout the country.

- **Recommendation 2**

The experience with the pilot project should be used to develop a plan for further expansion to other areas in the country and to develop a schedule of introduction.

7.3. ESTABLISHMENT OF THE PROBATION SERVICE

The civil servants at the ministry of justice are responsible for community service work and on one hand this could be a nucleus of future probation service. It is clear that the further development of the service and implementation of community sanctions and measures will be difficult without additional human, material and financial recourses. The recourses should be planned in the state budget.

It should be recommended that attention is paid to formulating a clear mission statement for the Service, either directly in the by-laws or in any strategic policy document underlying the by-laws. Any mission statement should of course be in line with the general strategic objectives of the Ministry the Service belongs to. Generally recognized important elements of mission statements of other European probation services include: public protection, reducing re-offending, risk assessment, effective execution of penalties and alternative (community-based) sanctions, assistance to offenders aiming at reintegration and rehabilitation.

- Organisation of the service

It is necessary to decide on the organisation of the service; there are different models in this regard e.g.
a) as a public body, financed by the state budget, but with a certain degree of independence regarding the implementation of tasks;

b) within the Ministry, but placing various tasks under the responsibility of separate departments;
c) as a private organisation financed by the state under specific control and conditions;
d) or a combination of the options above thus taking into account the separation of functions if necessary. Other options are of course also possible.

Another aspect to take into consideration when thinking about organisational setting is the embedding into local structures. Local Service units that work in the regions will have an important task in establishing working relations with various stakeholders. Important partners in the implementation of alternative, community-based sanctions are: the municipalities, local police, local branch of the prosecution service, youth care and social welfare organisations; charity organisations, hospitals and care homes for the elderly, etc. Any type of organisational setting should take into account a certain degree of flexibility for the local Service units, thus making it able for local Service units to fine-tune their specific day-to-day activities with their local partners.

As for the physical location of the local Service units, several choices can be made. The local Service units, could possibly be placed at courts, prisons or centres for social welfare and places of local municipality. For financial reasons, it is currently not realistic to create new facilities. Whatever choice will be made, sufficient, effective and secure working space is elementary for the well-functioning of the Service.

Tasks and responsibilities

The enforcement law should define the tasks of the service. Generally, based on the current legislative situation, the only definition related to the civil servant tasked with monitoring the sanction of community service, while social work centres are in charge of suspended sentence with supervision.

From a comparative point of view, a probation service like the Civil servants's Service could have a wide range of other additional tasks and responsibilities in the future

It is recommended that the Ministry considers opening the possibilities for extra products and services that are crucial for the success of these core tasks. In particular assessment of the risk of re-offending and the advisory functions towards judicial authorities should be considered.

Staff selection, recruitment and training

When proceeding with the recruitment and selection of future civil servants care must be taken that there will be "no discrimination" and that it should "take into consideration the specific polices on behalf of particular categories and the diversity of the offenders to be supervised". (R (92) 16 rule 37)

Moreover, “the staff responsible for implementation shall be sufficiently numerous to carry out effectively the various duties incumbent upon them”. Furthermore “norms and policies shall be developed to ensure that the quantity and quality of staff are in conformity with the amount of work and the professional skills and experience required for their work”. (R (92) 16 rule 38)

In addition to proper recruitment, attention is also necessary for adequate training of staff so that they are enables to “have a realistic perception of their particular field of activity, their practical duties and the ethical requirements of their work.” Furthermore their “professional competence [should] be regularly reinforced and developed through further training and performance reviews and appraisals.” (R (92) 16 rule 39)

Non-fulfilment of community sanctions or measures may have consequences for the client. Moreover, the consent of the client does not mean however that clients will always be most cooperative. At least a part of the work by the civil servants will therefore not only be done from the perspective social work with voluntary clients who are cooperative. This requires special knowledge and skills.

It is recommended that in due course time and energy is devoted to developing a proper working methodology for civil servants aiming at the specifics of working with probation clients (i.e. for the purpose of this report: clients who are sentenced to a community sanction or measure or a suspended sentence with supervision). This specific working methodology can then be integrated in the initial and permanent training programme for the civil servants.

Another aspect to consider is the possibility for civil servants to specialise in specific tasks. This might become more important in the future, when the Service will possibly expand its activities with an advisory function for the judicial process.

Conclusion

It is recommended that any type of organisational setting of the Service should take into account a certain degree of flexibility for the local Service units, thus making it able for local Service units to fine-tune their specific day-to-day activities with their local partners.

It is recommended that the Service invests in the design of its products and services, e.g. to defining the products and services in quantity and quality standards, thus contributing to a transparent, verifiable and efficient Service.

When choosing and developing products and activities, it is recommended that the Service strives to develop products and tools that are scientifically justified and have proven its effectiveness. This is important for the support basis in society and the preparedness of the general public to accept alternative sanctions and probation as well as to accept the Service as a useful and credible organ in the judicial chain.

It is recommended that the staff of the Civil servants Service receives adequate initial and permanent (in-service) training and that in due course a proper working methodology for civil servants is developed aiming at the specifics of working with probation clients

It is recommended that the group of potential employees of the Service is wide and may include former employees from the Prison Administration, as well as candidates from other work fields.

VIII. SUMMARY

The commitment to Community Sanctions in BiH is reflected in the existing legislation. Failure to implement that legislation may be observed as a failure of political commitment. The detailed examination by the Working Group and the findings of this paper show the situation is far more complex. This paper identifies the need for additional legislation and the importance of 'horizontal' harmonisation of the law at State and Entity level. It also shows the need for 'vertical' harmonisation by which is meant the need for a comprehensive approach in the Probation law, in the Penal Code, the Criminal Procedure Code, The law on Execution of Sentences and detailed regulation and standards.

Effective Laws are a key building block but their implementation requires work within government to establish a viable structure that courts and others can be confident in. This paper offers both an organisational implementation strategy based on European best-practice and some concrete ideas for practical realisation of the existing sanctions and measure through pilot projects. These first steps could provide a demonstration of the value that community sanctions and measures can offer to the criminal justice system and the public.

Council of Europe
Conseil de l'Europe

European Union
Union européenne

Joint Project between
the European Union and the Council of Europe

"Efficient Prison Management in Bosnia and Herzegovina"

II – STAFF CAPACITY DEVELOPMENT

MANUAL

FOR TRAIN THE TRAINERS COURSE IN HUMAN RIGHTS IN PRISONS IN BOSNIA AND HERZEGOVINA

Sarajevo, June 2009

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"We should treat people the way we want them to treat us"

Aristotle

"Manual for Train the Trainers Course in Human Rights in Prisons in BiH" is the final document of the Project.

CONTENTS

The following documents are integral parts of this Manual:

1. European Convention on Human Rights and Fundamental Freedoms
2. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
3. European Prison Rules
4. Examples from Practice for Trainers
5. Presentations

FOREWORD

The Manual is the result of Working Group Two, "Staff Capacity Building“, under the Joint Project between the European Union and the Council of Europe, "Efficient Management of Prisons in Bosnia and Herzegovina", implemented from February 1, 2009, until July 31, 2010.

We would like to present to you this Manual, which is designed so as to form an integral part of the prison staff training programme and to offer solid and standardized training to all staff in the field of human rights.

It should also be remembered that this document is not a final document. It is a living document which can be upgraded as the needs arise or as the training of prison staff evolves in time.

We trust that this document will serve the authorities well in the years to come.

Finally, we would like to express our appreciation to the competent ministries for their support of this project in its entirety.

I. INTRODUCTION INTO THE TRAIN THE TRAINERS COURSE ON HUMAN RIGHTS IN PENAL INSTITUTIONS IN BOSNIA AND HERZEGOVINA

The main purpose of this Manual is to introduce and simplify to the future trainers at penal institutions the standards from international instruments and mechanisms related to the concept of human rights of persons deprived of liberty[22] (hereinafter: prisoners). Better understanding and application of the basic principles of human rights will contribute to avoidance of infringement of prisoners' rights and reduce the possibility of their ill-treatment.

The aim of the training of trainers and their effort to transfer their knowledge to other prison staff[23] is to find constructive and long-term solutions to mitigate and gradually and eventually also eradicate violations of human rights of persons who are under their supervision.

It has turned out that prison staff, in their direct and daily contact with persons under their supervision, very often even unconsciously violates their human rights. In this sense, the training of prison staff on international standards relating to respect for human rights should contribute to improving conditions

[22] Hereinafter understood in the text as pre-trial detainees, sentenced prisoners and persons confined in psychiatric institutions.
[23] Hereinafter understood in the text as all prison officials dealing with persons deprived of liberty, including the management.

in penal institutions[24]. Improvement of the situation may require some legislative changes (including changes of various rulebooks), as well as changes in direct attitude of prison staff towards persons deprived of liberty. Many international mechanisms provide suggestions on how states can improve the overall situation in their country, for example through the introduction of legal and practical measures that enhance the protection of persons deprived of liberty.

Why protect human rights of persons deprived of liberty

Because the persons deprived of liberty belong to the group of most vulnerable persons, as the very position of such persons has an impact on their physical, legal, social, psychological, and every other aspect of their lives. Such persons are completely dependent of the entire range of state officers, starting from police officers, administration or the prison where they are detained, up to the state government. All these elements create a special need for additional measures to protect persons deprived of liberty.

II. INTERNATIONAL DOCUMENTS AND AUTHORITIES FOR PROTECTION OF HUMAN RIGHTS IN GENERAL AND OF HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY

There are a large number of conventions and agreements at universal and regional levels to protect any other sphere of human rights as well. Based on some of them, specific organizations or mechanisms to protect human rights have been established. For the purpose of this Manual, the most important conventions shall be listed, but we shall elaborate on those that are regional in character, i.e., conventions and rules of the Council of Europe.

2.1. General instruments for protection of human rights

United Nations:

- Universal Declaration of Human Rights
- International Treaty on Civic and Political Rights
- Optional Protocol to International Treaty on Civic and Political Rights

Council of Europe:

- European Convention on Human Rights and Fundamental Freedoms (ECHR)

[24] Hereinafter understood all prisons.

2.2 Instruments for protection of human rights pertaining to torture

United Nations:

- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Council of Europe:

- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, (ECPT)

2.3. General standards for treatment of persons deprived of liberty

United Nations:

- Standard Minimum Rules for the Treatment of Prisoners
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules")

Council of Europe:

- European Prison Rules, EPR
- European Rules for Juvenile Offenders Subject to Sanctions or Measures

2.4. International authorities supervising the application of commitments

United Nations bodies
The principal committees are:

- Committee against Torture (CAT): supervises the UN Torture Convention
- Human Rights Commission (HRC): supervises the International Treaty on Civic and Political Rights

Council of Europe

- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): supervises the European Convention for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment
- European Court of Human Rights (ECtHR): supervises the European Convention on Human Rights and the European Convention for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment

III. EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

3.1. Introduction into the system of the European Convention

- The European Convention (hereinafter referred to as ECHR, European Convention on Human Rights or, the European Convention) is a document of the Council of Europe, established immediately after the end of the World War II, aimed at protection of civic and political rights, but not economic ones, in Europe. It was adopted in 1950, and it came into effect in 1953.

- It is the first ever binding international document in the area of human rights.

- The establishment and the initial activities of the Council of Europe (seated in Strasbourg) were in part the response to serious violations of human rights during World War II.

- There were originally ten member states of the Council of Europe, whereas now there are 47.

- The main decision making bodies of the Council of Europe are the Committee of Ministers (executive body), and the Parliamentary Assembly.

- The European Convention entitles individuals to file applications – this is the right of individuals and organizations to challenge their governments through the procedure in Strasbourg, by filing their applications originally with the European Human Rights Commission, and then with the European Court of Human Rights.

- The rulings of the Court are binding for the signatory states of the Convention.

Bosnia and Herzegovina (hereinafter: BiH) ratified the European Convention on Human Rights on 12 July 2002, but it is also a unique example of application of the European Convention even before its ratification, specifically under the 1995 Dayton Agreement.

Article II, paragraph 2, of the BiH Constitution stipulates that "**The rights and freedoms set forth** in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols **shall apply directly in Bosnia and Herzegovina**. **These shall have priority over all other law**."

This would mean that domestic laws (and statues, rulebooks) should be in line with the protection provided by the European Convention, and if the domestic laws are not harmonized with the European Convention, then it should apply directly, in order to avoid violations of individual human rights, both for the citizens of BiH and for foreign nationals found on the territory of BiH.

Why do citizens and foreign nationals enjoy identical protection of human rights on the territory of BiH?

Because Article 1 of the European Convention stipulates as follows:

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

This means that on its territory, as a "High Contracting Party", BiH must guarantee "all persons" without exception, all the rights and freedoms arising from the European Convention, regardless of age of persons, their nationality and race, place of residence or ability. Territorial jurisdiction of BiH, or "its jurisdiction", does not only include a situation where persons come under state control, but it is also considered responsible for the situation involving extradition of persons to a country where they are threatened with torture or to inhuman or degrading treatment or punishment, even death penalty, or waiting for the death penalty. In addition, all legislation, even the constitutional one, falls within the "jurisdiction" of the member states.

In its first part (Part I), the European Convention establishes numerous fundamental rights and freedoms it protects, and in the second part, it deals with the mechanism aimed at protection of the rights guaranteed – it establishes the European Court of Human Rights and prescribes the rules of its functioning.

Which rights are protected in the European Convention and its Protocols?

In particular, the Convention shall protect:
- Right to life,
- Right to fair procedure in civil and criminal cases,
- Right to respect of private and family life,
- Freedom of speech,

- Freedom of thought, conscience and religion,
- Right to efficient legal remedy,
- Right to peaceful enjoyment of property, and
- Right to elect and right to be elected.

What is banned by the Convention and its Protocols?

In particular, the Convention shall ban:
- Torture and inhuman or degrading treatment or punishment,
- Wilful or illegal detention,
- Discrimination in enjoyment of rights and freedoms listed in the Convention,
- Deportation or ban of entry for its own citizens,
- Death penalty, and
- Collective deportation of foreign nationals.

3.2. What does the European Court of Human Rights do?

The European Court of Human Rights supervises whether each individual state meets the obligations taken in the Convention. Applications may be filed to the court by individuals and states (if there are disputes between two member states).

In its work, the Court applies the European Convention. Once it has established that a state has violated one or a number of the listed rights and guarantees, the Court passes the decision. The decisions are binding, because the states are obligated to execute them.

How does the European Court of Human Rights apply the European Convention?

The Court is not just a body dealing with specific cases and violations of rights listed in the Convention, but it actively interprets the European Convention, thoroughly addressing each specific issue related to violation of guarantees rights and expands their scope in line with the development of democracy in the society. In addition, the court applies the case law in its work (it is also known as court practice, meaning that the position taken by the Court is used as leading and is cited in subsequent judgements and decisions). This is why it is not just sufficient to know the text of the European Convention, but the practice of the Court also needs to be learned, because of which its decisions and judgements are frequently mentioned when we refer to the law from the Convention. The Convention is constantly being developed, because the Court expands the scope of protection of a specific right in line with the development of democracy in the society.

What does expansion of the scope of protection of a specific right in line with development of democracy in the society mean?

"expansion of the scope of protection" (evolutive character of the Convention) can be presented more simply with the following example: what was not considered to be torture in the 1970ties, for instance, the well-known "five techniques" of interrogation in the case of *Ireland v. UK*: hooding, obliging to stand for a long periods of time at a wall in 'stress position' – with the limbs outstretched, in premises where there was a continuous loud and intense noise; deprivation of sleep and reducing food and drink to a minimum, according to the current jurisdiction would constitute it, i.e. torture, and not just inhuman treatment as it was found in that case in 1978.

A major expansion of the scope of protection in the Convention occurred particularly in the 1990's, when a large number of Central and East European countries ratified the text of the Convention.

"in line with the development of democracy in the society" means that the Court shall consider the overall development of the society and the circumstances of life at the moment of ruling in a case. Then it shall consider what the current international situation is, as well as what the situation is in the signatory states, and it shall apply the research results in its judgement. Tolerance and broad-mindedness are two basic features of a democratic society in which the rule of law has major significance.

Why is the practice of the Court additionally important in cases against other states?

Because the judgements of the Court against other states may establish specific standards that also need to be applied in other states. They shall also be an example of how to proceed or not, to be followed by each signatory state in its country. In relation to this, the state should change laws and/or practical procedures pursuant to the law.

Which rights from the Convention protect persons deprived of liberty?

The persons deprived of liberty shall have the right to a majority of, if not all, rights and fundamental freedoms listed in the Convention.

Golder v. United Kingdom was the first case in which the Court found that the rights of a prisoner under the Convention had been violated; that case concerned a failure to respect the right of access to court which everyone should enjoy even (and perhaps especially) when they are in prison or otherwise detained.

In *Hirst v. the UK* the Court emphasized 'that prisoners … continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention except the right to liberty.

The persons deprived of liberty shall also enjoy other rights, such as:

- Prisoners may not be ill-treated, subjected to inhuman or degrading punishment or conditions contrary to Article 3 of the Convention (*Kalashnikov v. Russia*; *Van der Ven v. the Netherlands)*;
- Right to life (*Edwards v. UK* – a violation of Article 2 was found because of a failure to call prison officers who were on duty during the night, when the prisoner was killed by his cellmate)
- Respect for family life (*Ploski v. Poland; X. v. UK*),
- Freedom of expression (*Yankov v. Bulgaria, T. v. UK),*
- Practice their religion (*Poltoratskiy v. Ukraine)*,
- Right of effective access to a lawyer or to a court (Article 6 - *Campbell and Fell v. UK; Golder v. UK*),
- Respect for correspondence (*Silver and Others v. UK)*
- Right to marry (*Hamer v. UK, Draper v. UK*)

Why is the procedure before the European Court of Human Rights instituted against states?

Simply said, because the authorities (judicial, administrative, executive, police, prison administration, teachers at public schools and institutions, etc.) who work as civil servants at an institution or body which is governmental or any other body funded by the state or its organizational unit have violated or are violating the European Convention in their procedures or have had failures that affect that particular person.

What are positive obligations according to the Convention?

They mandate the government bodies and officials with the obligation to respect human rights, meaning they are required not to violate rights themselves.

They mandate the government bodies and officials with the obligation of protection, meaning that they need to protect those who enjoy rights against interference of third parties and punish their perpetrators.

They mandate the obligation of application, meaning undertaking of measures (legal and practical ones) in order to ensure full exercise of rights.

What are negative obligations according to the Convention?

Negative obligations require the government bodies to refrain and not interfere with exercise of human rights for individuals, that is to say, not to violate them.

What does an "autonomous" meaning of a right from the Convention mean?

This term is very frequently used in the reading pertaining to application of the Convention and practice of the Court in Strasbourg. This means that

expressions and terms do not have the same meaning and understanding as defined or as applied in our state.

IV. RIGHT TO LIFE (ARTICLE 2 of the European Convention, ECHR)

When compared with other rights and freedoms of prisoners, the frequency of violations of their right to life is less intensive. Besides that, there are certain elements and particular standards developed in the case law of the ECtHR that should be taken into account during the routine of running prisons. They concern both managerial and operative or security issues. At the same time, it should be mentioned that neither the European Prison Rules (hereinafter: EPR) nor the CPT standards provide for substantial requirements directly linked to the right to life.

The starting base is the very text of Article 2, which states:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

The text of Article 2 may be divided into two main blocks, as shown above.

The first sentence mandates (a positive obligation) the state to legally protect the life of every person. The ban of murder also pertains to protection against natural persons and to protection against government bodies:

"Everyone's right to life shall be protected by law."

This means that there needs to exist a clear text of a domestic law, understandable to all, which bans intentional murder and reckless threatening of life, as well as an obligation to undertake all protection measures in order to save life. In the case of prison, this means that prison authorities need to undertake all protection measures and must react appropriately when a prisoner (or any other person) illegally kills another prisoner (or any other person) in prison. "React appropriately" in this case means that there is an obligation to efficiently conduct official investigation in order to identify and prosecute the perpetrator.

For instance, in the case of *Edwards v. UK,* a violation of Article 2 was found because of a failure to ensue involvement of prison officers who were on duty during the night, when the prisoner was killed by his cellmate. This means that no protective organizational measures existed in this prison.
"Reckless threatening of life" may include threats against life of other persons, risks for environment or protection of persons against themselves (preventing them from committing suicide), for instance, undertake all measures in order to prevent suicide or murder of prisoners – particularly strict supervision and regular controls of prisoners and cells).

Prevention of suicide – if the authorities are aware of the risk that a person would threaten his or her life, they need to undertake all reasonable measures in order to prevent the suicide. Then the authorities, or prison officers, need to undertake measures involving strict supervision. There needs to exist, for instance, routine search of prisoners, confiscation of sharp objects or accessories which could be used as ropes.

In *Oneryildiz v. Turkey,* a violation of Article 2 was found when the authorities were negligent in both implementing preventative measures in relation to waste storage and failing to provide people who lived on slum land with sufficient information about dangers in order to protect them. As a result, after methane explosion part of mountain of waste engulfed several slums that led to deaths of 39 people. The latter case is not directly linked to prison issues, but the principles and standards mentioned should be applied in respect of custodial settings equally. In the case of prison, this obligation of the prison administration would be even stricter, because prisoners belong to the so-called "vulnerable group" of persons (as explained in the European Convention section) and it may pertain to issues such as fire, building construction, healthy environment, etc.

The term "threat against life of other persons" may appear in relation to police protection or other protection in prisons, if the administration has not undertaken the measures to avoid risk against life of a person, while they were aware or should have been aware that such risk existed. An example for this is the case of *Osman v. UK,* which pertained to the murder of a father, and it began when a teachers with psychiatric problems persecution of a pupil and his family. Then there was an obligation involving appropriate reaction on the part of the police. In a custodial setting it would apply to problems of inter-prisoners violence, for example.

Duty to investigate killings and suspicious death cases also pertain to disappearances suspected of possible involvement of state authorities in life-threatening situations. Thus in *Timurtas v. Turkey* (2000), the Government denied fact of taking the victim into custody during a military operation in the area of his residence. However the Court based its findings just on a photocopy of army post-operational report recording the arrest of the subsequently disappeared applicant's son. The Government stated that the photocopy was a fake one, but it was taken into account that it failed to disclose respective genuine document it claimed to hold. Therefore, even

vague indications of state involvement in disappearances do entail the application of Article 2.

The obligation to investigate suspicious deaths arises irrespective of how the authorities have found out about the death, State agents' involvement, or the circumstances surrounding the death. This obligation also exists when a killing was not intentionally committed. In *McShane v. UK*, Article 2 was held to be engaged in relation to negligent driving of an armoured vehicle being driven into a rioting crowd.

Investigations have to be independent, thorough, prompt and involve element of scrutiny, participation of damaged party, i.e. relatives of killed person. It should be clearly kept in mind that it should be carried out by fully independent state structures. In the case of *Ramsahai v. Netherlands* even couple of hours of the initial stage of investigation by the police against police officers appeared to be enough for finding of violation in this regard. Therefore, the duty of penitentiary administrations seems to be quite limited. To be on a safe side, they have to ensure an immediate involvement of competent independent investigative authorities whenever a prisoner dies in suspicious circumstances.

This is particularly important in all cases when a prisoner admitted to an establishment in good health subsequently dies. Without a solid and proven explanation of the cause of death, the state will be in breach of Article 2.

The remainder of the Article offers exemptions from this obligation, that is, it provides cases when deprivation of life is justified, that is, when it is allowed. The first case of justified deprivation of life is stated in paragraph 1:

"No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

This is an initial provision included at the time of Convention's adoption in early 1950's. At the time, death penalty was considered a normal and acceptable method of punishment. Subsequently, this part was completely abolished, including in the period of war (in Protocols 6 and 13).

Death penalty was also abolished in BiH. At the same time, it needs to be noted that complete cancellation of death penalty also includes obligations beyond the territory of BiH, specifically in cases involving extradition of persons to other countries, where they are threatened with death penalty (extradition or deportation). Therefore, if extradition of a person is sought who has committed a crime for which death penalty may be pronounced, this person should not be extradited to the applicant country.

All exceptions (justifications) when a human being may be "legally" deprived of life are stated in the second part of Article 2:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

In other words, a death caused by a state agent through use of force for the reasons stated under a, b. and c., may be justified, but it should always be considered whether the force used was necessary and appropriate in the given situation.

What does it mean to use absolutely necessary force and appropriate to the specific situation?
Defence of any person, including self-defence can be a justified reason for taking of life in case of proportionality of the threat. Killing can't be justified by using it in defence of property, for example. Besides that, there should be no other reasonable and acknowledged possibilities to avert respective danger.

In the case of *McCann,* there was the intelligence that terrorists had planted a car bomb and were going to activate it by means of concealed remote control detonator. It was not disputed that the soldiers who killed the suspects were not to be blamed and that the threat was serious – lives of others were at stake. The main target for the Court was constituted by planning of the operation. The authorities knew identities of the terrorists and were following them and could, in case of better planning of the operation, reach their goals without killing them. The Court concluded that the force used was not absolutely necessary, because they were other possibilities to prevent the threat at earlier stages.

The second scenario is related to lawful arrest or escape of lawfully detained persons. In the case of *Nachova v. Bulgaria,* the Court found that it was not absolutely necessary to use firearms to arrest non-violent offenders who posed no threat to anyone. The Court held that under those circumstances the use of firearms would be unlawful, and that the prison administration (as well as all other authorities concerned) has to take into account whenever an issue of use of lethal force is concerned:
'. . .*whether the operation was planned and controlled by the authorities so as to minimize, to the greatest extent possible, recourse to lethal force. The authorities must take appropriate care to ensure that any risk to life is minimized.*'

The approach followed by the Court can be illustrated by reference to the case of *Makaratzis v. Greece*. The police tried to stop the applicant, an unarmed civilian, after he had driven through a red traffic light in the centre of Athens. Makaratzis did not stop and accelerated. He was pursued by several police officers in cars and on motorcycles and his car collided with several other vehicles. Two drivers were injured. After Makaratzis had broken through five police roadblocks, the police officers started firing at his car. Eventually, he stopped his car at a petrol station, but locked the doors and refused to get

out. However, the police officers continued firing. Finally, Makaratzis was arrested by a police officer, who managed to break into the car. Makaratzis survived thanks to immediate medical assistance provided in hospital.

Having regard to the conduct of Makaratzis at the time of commission of the crime, and to the climate at the time, marked by terrorist actions against foreign interests, the Court accepted that the use of force against him had been based on an honest belief. However, the Court was struck by the chaotic way in which the firearms had actually been used by the police and serious questions arose as to the conduct and the organization of the operation. The Court considered that the degeneration of the situation had largely been due to the fact that at that time neither the individual police officers nor the chase, seen as a collective police operation, had had the benefit of the appropriate structure which should have been provided by the domestic law and practice.

At the time the use of weapons by State officials had still been regulated by an obsolete and incomplete law for a modern democratic society. The system in place had not afforded to law-enforcement officials clear guidelines and criteria governing the use of force in peacetime. Based on these arguments the Court found a violation of Article 2 and that in spite of the fat that the applicant survived.

Supervision of police/penitentiary operations understands that they should be prepared and controlled, so as to reduce the use of lethal force to a minimum. When the Court rules in a case about whether the necessity to use force existed, it shall carefully examine the general cause of the operation, how the forces were deployed and what measures were taken, how orders were issued and how information was submitted to staff in the field and the connections among the staff, as well as the hierarch, method of conducting the operation, aw well as many other features that may be indicative of omissions. If the Court establishes that there were omissions, it shall conclude that „there was no absolute need to use force“and that Article 2 has been violated.

In the case of *Nachova and Others v. Bulgaria*, the Court even mandates states to offer police forces and security services training to this effect: "they need to be trained to be able to assess whether it is or it is not absolutely necessary to use firearms, not only in application of the law and rules, but also strictly taking into consideration the primacy involving respect for human life as the core value".

A riot or insurrection has not been defined, but where hundreds or thousands of people are throwing projectiles at the security forces Article 2(2)(c) has been held to apply. The Court insists on use of appropriate riot control equipment and so on. *(Gulec v. Turke*y). However, it is not enough to classify unrest as a riot. Threats should be serious and endanger lives maybe as not immediately, but imminently. Operations have to be appropriately planned, staff involved trained and so on.

In *Ergi v Turkey* the Court held that the civilian population in a village were likely to have been exposed in cross-fire between the security forces and the PKK, and that insufficient precautions had been taken to protect lives.

These were just general features of the case law and applicable standards.

4.1. ECHR Article 2

Three top terrorists, a woman and two men, have been already under surveillance for some time in the neighbouring country. There is suspicion that they would plant a car bomb at a particular location used by the armed forces of the state. Two of the terrorists have already served prison sentences for handling explosives. One had served a long-term prison sentence for causing an explosion. The possible attack date (8 March) is known. Three different state services are on alert: the police, army and security forces.

Photos of all three suspects are available to border police but for safety reasons, the border police was not involved in plans to detain the terrorists; they mostly scanned passports of "suspicious" cars for one of the surveillance teams, which are located a short distance from the border. The plan is to make the arrest at the time when all members of the terrorist team are present and identified, and when they park the vehicle they intend to leave. Any previous activity is considered to be premature, as it would probably increase the suspicion among the non-arrested terrorists, which would result in risk to life, and there would be no evidence for the police to use in court.

The terrorists cross the border undiscovered on 6 March. It seems that the border guards are not aware that the group uses false names and they focus on the vehicles containing one woman and two men. Later, individual members of the terrorist group begin to be identified in different places in the city. The information was forwarded in a little uncoordinated manner to the different parties involved in the surveillance operation. By 14:55, all three terrorists were identified by security forces and they were observed to behave as though continuing according to the plan to plan the car bomb. The final confirmation was received at 15:30. The car that was seen approaching and that they had now left was examined for two minutes, and mainly on the basis that it had a 'suspicious' antenna, suspicion of a car bomb was declared. This information was forwarded to members of the Special Forces, an elite security unit, trained to kill.

The special unit issued an order to protect life, prevent a terrorist attack, arrest the terrorists and place them in secure custody pending trial. In addition, for orders to be issued that may be given by the appointed commander of the operation. They were told that terrorists were probably armed and that they should use weapons in case of resistance, detonate the bomb if there is resistance. The special unit had the following instructions on the use of force:

4. You and your people shall not use force unless you are required to by the appointed senior ranking officer(s), or unless it is necessary to protect life. In

this case, you and your people shall not use force more than is necessary to protect life...
5. You and your people may open fire against a person if you or they reasonably believe that the person at that moment seems to or it is preparing to conduct an action that is likely to endanger your or their lives or the lives of any other person and if there is no other way to prevent this.
6. You or your people may shoot without warning if the giving of a warning or any delay in shooting could lead to the death of or injury to you, them or any other person or if it is impractical to give warnings.
7. If circumstances referred to in paragraph 6 do not apply, a warning is necessary before shooting. The warning must be stated as clearly as possible and must include an instruction for the person who is surrendering that fire shall be opened unless they act accordingly."

At 15:40, the commander of the operation issued the command to the special unit to arrest terrorists, as follows: "After considering the terrorist situation in the country and after I have been fully informed on the military plan involving weapons, I demand you to continue the military option, which may include the use of deadly force in order to protect life."
The group of terrorists is running away. The special unit members in civilian clothes, armed with small weapons followed them a few meters into the street, right next to the street where the suspicious vehicle with a car bomb was, in which the people passed. Police officers shot and killed the suspects in confusing scenario, where the gunshots could be heard by both the suspects and all other officers, and the police car had arrived with a siren. Later in the evidentiary procedure, the officers claimed that they were not able to peacefully detain the suspects after a clear warning, because the suspects became suspicious and made hand movements that have led officials to believe that they would detonate the car bomb. Statements of witnesses from the scene are confusing and contradictory.

At 15:47 to 15:48 hours, the message was received in the operations room that the three suspects had been detained. It was not clear at this stage whether they were arrested or killed. Between 16:00 and 16:05, the report was received in the operations room that the three suspects were killed. At 16:05 to 16:06, the special unit returned the responsibility for the operation to the commander of the entire operation.

After shooting, the bodies of the three suspects were searched. No weapons or devices for detonation were found. The suspected vehicle was searched. No bomb was found.

At the site of the shooting, most of the shells and bullets were picked up and their location was not marked nor was their position recorded otherwise. The posture of bodies was not marked. No police photos were made of the postures of bodies. One body was marked by chalk body outlines with 5 lines, of which three around the head.

Autopsy was performed of the three dead suspects on 7 March. Both state pathologists and those appointed by the deceased persons' families complain

that the bodies were exposed, which was not helpful for them in determining entry and exit wounds; there were no x-ray devices and they had not been supplied with a complete set of photographs as reference or forensic and ballistic reports. The investigation lasted for ninety days, evidence was heard, seventy-nine witnesses, including soldiers, police officers and surveillance teams involved in the operation, pathologists, forensic specialists and experts for detonation of mines and explosive devices.

It was found that one woman terrorist was shot three times in the back, from the distance of approximately one meter. She had five wounds in the head and neck. Injuries to the face indicated that either the whole body or the upper body was looking at the person who fired shots. A justified scenario in accordance with the wounds was that she received shots in the face while she was turned towards the person who fired shots, then fell and received shots in the back. It was pointed out that she was at the stage of falling down or was on the ground when shot in the back. She was shot a total of eight times.

As for the other person, he was shot in the back twice and had three wounds on his head. The wound on top of the head indicated that the wound in the chest were created before the wound occurred on the head, and that he was on the ground or falling to the ground when they were inflicted. The body was shot at an angle of 45 degrees. He was shot with five bullets.

As for the third person, he was shot with sixteen bullets. He had seven wounds on the head and neck, five on the front of the chest, five on the back of the chest, one on top of each shoulder, three in the stomach, two in the left leg, two in the right leg and two on the left arm. The position of the entrance wounds suggests that some of the wounds were sustained while he was facing the person who fired shots. But the wounds in the front part of the chest had entered the back part of the chest. The pathologist agreed that he "was riddled through with bullets" and that it "looked like an attack by a frenzied person." He agreed that it is reasonable to assume, based on the scratches on the pavement, that the bullets were fired into his head while he lay on the ground. The pathologist agreed that the evidence from the scratches and angle as well as the status of the wounds indicated that he had been shot with bullets while lying on his back on the ground by a person who stood at his feet. He insisted, while he was interrogated by the soldier attorney, that the three scratches on the ground inside the chalk outline correspond with the wounds on his head. In his opinion, "those wounds must have been inflicted when the head was on the ground or near the ground" when he was pressed at "a few centimetres from the ground."

At approximately 18:00 on 8 March, the car associated with the terrorists was discovered in the neighbouring country. It contained a powerful explosive device and two timers that were not installed or connected.

4.2. Hypothetical case on Article 2 of the ECHR

Since 2002 the penitentiary system of the country had experienced serious overcrowding. In order to remedy the problem the government took a decision to convert certain facilities into penitentiary establishments. Two one storey barracks of the abandoned military base in the city of Bron were among them. The prison had the capacity of 200 places. One of barracks had been adapted for a remand section with the capacity of 100. As to the second, it had been used for keeping those sentenced for up to 1 year of imprisonment.

The rest of the territory of the base was used as a waste bank of the neighbouring metallurgical plant. Although the authorities had erected a 3 m high wall separating the territory of the temporary establishment, the report, drawn up by invited specialists on 7 May 2003, stated that the adjacent tip did not conform to the technical requirements set forth in the regulations and, accordingly, presented a certain number of dangers liable to give rise to a major health risk for the inmates. The authorities increased the height of the wall up to 4 meters, but the measures did not meet the concerns regarding possible slide of the tip impeding over the nearest barrack N1.

Due to repeated complaints and reports drawn up by human rights organizations, it was decided to close the prison down and transfer prisoners before 1 July 2004. However, prior to that date, at about 11 a.m. on 28 April 2004 as a result of a landslide caused by mounting pressure the refuse erupted from the mountain of waste and buried the closest part of the barrack N1 with some ten cells. In spite of rescue operation nine remand prisoners kept in the cell N12 died. Remaining remand prisoners were transferred to the central remand prison.

Although the barrack for sentenced prisoners was not affected directly, the landslide damaged the perimeter of the prison, security and electricity systems (including emergency ones). The establishment was encircled by the special police unit. Its members were told that they should carry their handguns and automatic rifles, wear bullet-proof vests and briefly ordered to prevent escapes. There were no detailed regulations on use of firearms in the country concerned. The respective bylaw mentioned that firearms can be used whenever escaping offenders do not stop in spite of orders and ‘warning shots’. Members of the unit were not given any additional instructions.

Around 6 p.m. having noticed two prisoners escaping through the window and running towards the street, one of officers, Sergeant N., shouted: Stop, police! He had pulled out his gun, but not fired any shots. The two men had carried on running. Sergeant N. had run out on to the street in an effort to intercept them by circumventing remains of the wall. While running, he had heard another shout: Freeze, freeze [or] I'll shoot! It was then that the shooting had started. Sergeant N. discovered two bodies on the street lying in front of the remains of the wall, with their legs pointing to the direction of the barrack. No weapons or other items were found on them. These were prisoners Mr. Apple and Mr. Pear who had been sentenced to 6 and 7 months

of imprisonment accordingly for repeated drunk driving. The medical nurse immediately called in from the prison established their death.

The scene that had not been protected was inspected on the next day between 9 a.m. and 9.30 p.m. by the chief investigator of the city police, who was given 9 spent cartridges from automatic rifles collected by the prison staff. Subsequently it appeared that due to the emergency situation numbers of rifles picked and returned by members of the special unit were not recorded.

All of them were questioned by the same investigator, but none of them reported use of rifles. According to the autopsy report, the cause of Mr. Apple's death was a wound to the chest, the direction of the shot having been from front to back. As regards Mr. Pear, the report found that the cause of death had been a gunshot wound, which damaged a major blood vessel and that the direction of the shot had been from back to front.

Based on these materials the prosecutor's office of Bron refused to initiate criminal proceedings due to absence of corpus delicti, since it was found that firearms were used 'while preventing the escape of sentenced prisoners'.

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The audience to be split in three groups: applicants, respondent state agents, court. Each group has to prepare for performing their role during a moot court exercise using the ECHR/Case Law, the EPR and the CPT Standards.

Alternatively the audience can be asked to detect, specify elements of respective human rights violations based on the instruments concerned (ECHR, EPR and CPT Standards) and elaborate measures/recommendations to remedy and prevent them.

4.3. Commentaries to the Hypothetical Case on Article 2

- In the instant case the Court's first task is to determine whether substantial grounds have been shown for believing that the respondent State did not comply with its duty to take all necessary measures to prevent lives from being unnecessarily exposed to danger and, ultimately, from being lost.
. . . The administrative authorities knew or ought to have known that the inhabitants . . . were faced with a real and immediate risk both to their physical integrity and their lives. . . The authorities failed to remedy those deficiencies and cannot, moreover, be deemed to have done everything that could reasonably be expected of them within the scope of their powers under the regulations in force to prevent those risks materializing. **CASE OF ONERYILDIZ v. TURKEY, 2002.**

- In particular, it is necessary to examine whether the operation was planned and controlled by the authorities so as to minimize, to the greatest extent possible, recourse to lethal force. The authorities must take appropriate care

to ensure that any risk to life is minimized. The Court must also examine whether the authorities were not negligent in their choice of action.

- The investigation must be, *inter alia*, thorough, impartial and careful.

- Also, for an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (. . .). This means not only a lack of hierarchical or institutional connection but also a practical independence (. . .).

- The Court thus finds that respondent State is responsible for deprivation of life in violation of Article 2 of the Convention, as firearms were used to arrest persons who were suspected of non-violent offences, were not armed and did not pose any threat to the arresting officers or others. The violation of Article 2 is further aggravated by the fact that excessive firepower was used. The respondent State is also responsible for the failure to plan and control the operation for the arrest . . . in a manner compatible with Article 2 of the Convention.

- . . . the relevant regulations and practice revealed flaws in that the absolutely necessary standard under Article 2 of the Convention was not applied. **CASE OF NACHOVA v. BULGARIA, 2004.**

- See Rules 64.1-67.3 of the EUROPEAN PRISON RULES.

V. PROHIBITION OF ILL-TREATMENT (ARTICLE 3 OF THE ECHR)

Article 3 of the Convention states:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

With these nine words, Article 3 represents one of the shortest provisions of the Convention and it is the most important right that comes into mind in connection with prisons. However, the brevity of this article should not be taken so as to ignore its significance. The actual content of Article 3 can be traced through the case law of ECtHR.

Regardless of the sad fact that reliable reports indicate that torture is still going on around the world, prohibition of torture is not only the prohibition contained in the Convention, but also in other international instruments: from Article 5, of the Universal Declaration of Human Rights *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment",* to the Rome Statute of the International Criminal Court in 1998 declaring torture, as part of a widespread or systematic attack on civilians, a crime against humanity.

In addition to the Convention, the majority of member states of the Council of Europe are also parties to the following international treaties prohibiting torture:

- *Four Geneva Conventions of 1949.*
- *UN International Covenant on Civil and Political Rights of 1966, Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"*
- *UN Convention against Torture and other Inhuman or Degrading Treatment or Punishment (CAT), 1984.*
- *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*.

The importance of the prohibition of ill-treatment and attention paid to this right has led to creation of a specific instrument, specifically, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment, also providing for a separate body, that is to say, the European Committee for the Prevention of Torture (CPT), which performs international inspection and supervises its application.

What is the negative obligation according to Article 3?

This Article includes the obligation to refrain, that is to say, not to torture, not to punish and not to subject to inhuman treatment or punishment.

What is the negative obligation of the state according to Article 3?

Conducting investigation in connection with reported violations of this law, the legal protection of persons against prohibited conduct and ensuring of acceptable conditions of detention and adequate medical treatment.

In order to understand what kind of conduct is prohibited and what is necessary to ensure this right to all those who are under state jurisdiction, it is necessary to understand what each term in this article means.

The words in the Article may be broken down into five elements:

- torture
- inhuman
- degrading
- treatment
- punishment

What does torture mean?

This is pre-conceived:
- cruel infliction of severe mental or physical pain or suffering
- intentionally or knowingly causing the pain

- intended for a special purpose, such as obtaining information, punishment or intimidation.

The first judgment where ill-treatment was classified as a torture was delivered quite recently on 18 December 1996 in *Aksoy v. Turkey*. It was made in respect of 'Palestinian Hanging' when a victim had been stripped naked, with arms tied back together behind back, and suspended by his arms. It has been stated that this treatment is clearly of deliberate nature and would appear to have been administered with the aim of obtaining admissions or information from Aksoy.

Following this, in the case of *Aydin v. Turkey,* Court stated the criterion of deliberate infliction of pain due to the nature of the acts committed by state officials against Miss Aydin. She had been raped, subjected to series of particularly terrifying and humiliating experiences: beatings, blindfolding, parading naked, pummelling with high-pressure water. The age (17) and mental suffering were taken into account too.

Other treatments that the European Court has found to amount to torture include:

- severe forms of beating *(Selmouni v. France)*
- falaka/ falanga: beatings on the soles of the feet *(Salman v. Turkey*, *Greek* case 49)
- severe beatings, combined with denial of medical treatment *(Ilhan v. Turkey)*
- electric shocks hot and cold water treatment, blows to the head and threats concerning the ill-treatment of the applicant's children*(Akkoç v. Turkey)*
- standing against the wall, putting a hood on one's head, sleep deprivation, exposure to high-pitched noise, deprivation of food and liquids (Ireland v. UK),
- total isolation with tied eyes and hitting during long interrogation (Dikme v. Turkey).

Size or intensity of suffering inflicted can be measured by how much the pain or suffering lasted, by physical and psychological consequences, gender identity, age, health condition of the victim and the method of execution.

In the judgment on the case of *Ilascu and Others v. Russia and Moldova* (2004) that concerned very harsh treatment of prisoners in Transnistria, torture was directly linked to the grave material conditions, strict regime of deprivation of liberty and inadequate medical treatment that were found to be inflicted intentionally.

What does inhuman treatment mean?

It is the most frequent type of violation of Article 3 and it may be described as infliction of intense, severe physical and/or mental suffering. Mainly these are instances of unjustified violence of law-enforcement agents. For example, in *Egmez v. Cyprus* (2000). The Court has found it in regard of beating by state agents that occurred "over a short period of heightened tension and emotions"

and did not attain the threshold to constitute torture due to absence of aggravating elements, such as an aim to extract information.

What does degrading mean?

Is the kind of treatment which arouses in victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. It is also described as treatment which includes breaking of the physical or moral resistance of the victim,[25] or making the victim to act against its will or conscience.

Both inhuman and degrading elements do not necessarily require intentional character of conduct or its effects.

One of the first illustrations of finding a violation of Article 3 in a degrading form can be found in the case Tyrer v. UK (1978) that concerned the issue of corporal punishment. The 15 years boy was subjected to three strokes of the birch. In the presence of his father and a doctor the applicant was made to take down his trousers and underpants and bend over a table; he was held by two policemen whilst a third administered the punishment. The boy's father lost self-control and after the third stroke he "rushed" to attack one of the police officers, so they had to tie him. The strokes caused swelling, there were no cuts, and the skin of the applicant was swollen and painful for almost ten days. The court believed that the authorities had treated him as an object and that the strokes were an attack against his dignity and physical integrity.

One of instances of degrading treatment directly related to incarceration is given in the case *Price v. UK (*2001). In spite of the fact that there was no evidence of any positive intention to humiliate or debase Ms. Price, the Court considered that detention of a severely disabled person (the four-limb deficient applicant) in conditions where she was dangerously cold, risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet or keep clean without the greatest of difficulty, constituted degrading treatment.

The Court has developed the case law along the line that the same treatment may include components of inhuman and degrading characteristics simultaneously. For example it was found in *Tomasi v. France* (1993). The physical assault in this case consisted of slaps, punches, kicks, forearm blows, standing for long periods without support with hands cuffed behind the back or putting Tomasi naked in front of an open window, deprivation of food and threatening with firearms. The ill-treatment lasted over a period of two days while in police custody.

The Court often finds violations of the right in question in respect of conditions of imprisonment. In the case of *Kalashnikov v. Russia* (2002) one of main points of applicant's claim was related to holding for four years and ten month in harsh material conditions with the factor of overcrowding as one of its

[25] *Ireland v. UK,* p. 66, § 167.

aspects: the cell of less than 20 sq. meters designed to accommodate 8 inmates (there were 8 beds) was shared by 18 to 24 of them. The conditions were aggravated by lack of ventilation, cleanliness and other negative factors. The Court has ruled that these circumstances amounted to degrading treatment.

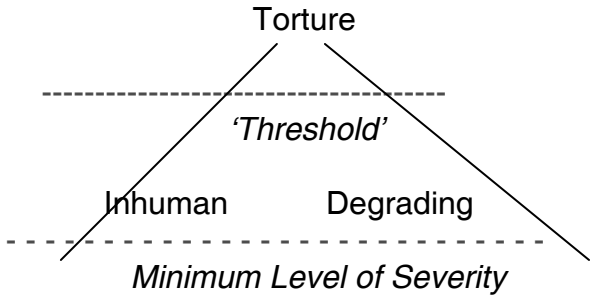
This case is another illustration of the fact that inhuman or degrading elements can result from acts or circumstances not directly aiming them.

As the most universal element, inhuman treatment (sometimes combined with degrading one) covers very diverse range of violations that fall under the prohibition. For example, issues of medical treatment of persons deprived of their liberty are quite often dealt primarily under the heading of inhuman treatment. For example, the *Greek* case (interstate case initiated by several western states against Greece during the regime of so called 'Black Colonels' in early 70-ies) contained facts of inadequate medical care of inmates that had been considered as inhuman treatment. Now, it is a well-established requirement and, when overlooked, it constitutes a breach of Article 3. This element applies in any instance when a substantial medical treatment is required, regardless a cause of illness. It should be provided even if health problems appeared before the detention or were caused during violent, but lawful apprehension.

In *Ilhan v Turkey* where the applicant's brother who sustained major injuries during the anti-terrorist operation was not taken to hospital for treatment until thirty-six hours after his apprehension. There were some other factors that led to the finding of torture, but the failure to provide reasonably prompt medical care was considered to be an essential element of the violation. Deficiencies in respect of medical treatment of prisoners, its low quality now form one of considerable aspects of violations found by the ECtHR (*Ostrovar v. Moldova)*.

The list of violations found and respective scenarios is very long. I would like just to emphasize that the Strasbourg court is very attentive to the right in question. It is ready to look at many situations from that angle.

Respective notions have been crystallized enough for the purposes of identifying a treatment that could be considered as amounting to torture or other forms of violation of the right. In addition, there is a scheme that illustrates an interrelation of the elements of prohibition and the mechanism of classification applied by the Court. When kept in mind it helps to identify possible violations.
It is a triangle with the torture on the top of it. Torture is the gravest violation in comparison to two remaining ones and that is why it is there. Consequently, the corners in the basis of the triangle should be designated for inhuman and degrading constituents. The difference is in the severity of suffering. It does not mean, however, that people are less protected from other elements that entail prohibited degree of suffering. In case of torture it is extremely severe and intensive.



So the decisive criterion of the classification is a level of suffering. There are several degrees divided by borders. One separates torture from two other constituents of the prohibition. It is called 'threshold'. And another, often referred to as 'minimum level of severity', distinguishes violations of Article 3 from 'unpleasant' or objectionable treatments that do not lead to a significant severity and a violation of Article 3 accordingly.

Not all suffering and humiliation violate Article 3 of the ECHR. There are certain situations that are not harsh enough to constitute inhuman or degrading treatment. Every form of legitimate treatment or punishment includes inevitable elements of suffering or humiliation in. For example, measures depriving a person of his liberty may often involve such an element. That is why it cannot be said that detention in itself raises an issue under Article 3 of the ECHR. But the suffering and humiliation should not go beyond the accepted limit.

The case of *Ocalan v. Turkey* can serve as an example in this regard. He has been kept in special prison, on Imrali Island. He is the only inmate. He has got problems with relatives visiting him *etc.* The conditions are close to solitary confinement. The ECtHR found other violations, including of Article 3, 6 and so on. But in respect of his imprisonment, the Court said that particular arrangements had not entailed a treatment that would attain unacceptable level under Article 3.

Special emphasis on creation of respective guarantees, circumstances that would exclude a violation of Article 3, especially in the light of vulnerability of potential or alleged victims of torture, inhuman or degrading treatment or punishment, including those deprived of their liberty, had led to elaboration or development by the Court of implied positive obligations. And that without any express positive obligations in the text of the Article. In general, the positive obligations are similar to those developed under Article 2 of the ECHR. Therefore, creating conditions that would exclude violation of Article 3 would be: conducting investigation in connection with reported violations of this law, the legal protection of the rights of persons against prohibited conduct (as well as obligations concerning the right to life), and ensuring of acceptable conditions of detention and adequate medical treatment (in consistent with the findings of CPT).

The absolute nature of the prohibition of torture, which includes inhuman and degrading treatment or punishment as well, has been emphasized by the Court in the judgment on the case *Chahal v. UK*. The United Kingdom wished to deport Chahal, a Sikh separatist, to India arguing that he had been involved in terrorist activities and posed a risk to the national security. This is a judgment from 1996. Its importance has increased significantly in the light of the ongoing 'war on terror'. The essence of the Court's approach is illustrated by the following assertion:

"The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct."

In other words, there are no arguments or reasons that could justify torture and other forms of prohibited treatment.

5.1. Hypothetical case on Article 3 of the ECHR

Mr. Someone was born in 1974 and worked as an assistant to the mayor of city of Bron. On 12 August 2002 he was arrested by the police on charges of bribe-taking. On 15 August 2002 the Bron Regional Court ordered the remand of Mr. Someone for a period of sixty days. On the same day he was placed in the Remand Centre No. 3 of the Ministry of Justice. On admission to the Remand Centre the inmate was obliged to strip naked in the presence of a female prison officer. He was then ordered to squat, and his sex organs and the food he had brought from the police were examined by prison officers who were not wearing gloves. Next morning Mr. A. filed a written complaint to the Director of the Remand Centre that the mentioned elements of the admission procedure were administered with the intention of humiliating him. Mr. A. has never received a reply in respect of the complaint.

The remand was later prolonged by the decisions of the same Court of 10 October 2002 and 11 December 2002. Mr. Someone was allocated to and spent the remand period in 25 m² cell together with at times more than twenty people, but not less than sixteen inmates. There were six metal bunk-beds, with thin mattresses and pillows. Bed-linen was provided according to the number of beds only. Smoking inside the cells was not prohibited by the internal regulations of the prison, and because of lack of alternative smoking facilities, the inmates had to smoke inside the cells. The applicant suffered from asthma and the prison administration was aware of this since he had been arrested and brought to prison immediately after undergoing asthma treatment in hospital, where he was arrested. Because of the exposure to cigarette smoke the applicant suffered many asthma attacks, which usually happened two or three times a day. The situation was worsened by the fact that the cell's window was closed by shutters and there was no fresh air coming through it. Moreover, the cell was not provided with a ventilation system, and was therefore very damp. Due to lack of necessary space (the

establishment was situated in the middle of the city), there was no possibility to set up a walking yard for prisoners at the Centre. They could spend up to 45 minutes in a large room with removed windows and shutters on the third floor of the building.

Water was provided to the cell for only ten hours per day, sometimes less. Access to warm water was limited to only once in fifteen days. There were no facilities for washing and drying clothes. The inmates had to dry their clothes in the cell. The toilet was situated at 2 meters from the dining table and was permanently open. It was impossible to prevent the bad smell because of the lack of adequate water supply and lack of cleaning products.

There was no adequate medical assistance. Although there were medical personnel in the penitentiary, their ability to help was limited, because of lack of medication. The applicant asked the prison doctor on many occasions for medical assistance, but he was refused. He was told that the prison did not have the necessary medication. Because of the lack of medication he had to endure the attacks and wait for them to pass, being obliged to sit in a vertical position. His attacks became more frequent and started to last longer. While the prison doctor knew that the applicant suffered from asthma, he gave his permission for the applicant to be placed in a cell with smokers. The applicant had to rely entirely on the supply of medication from his family.

After repeated denial of his request to be provided with adequate medical assistance and conditions, Mr. Someone went on hunger strike on 13 September 2002, consuming only water. On 30 September Mr. Someone's mother filed a complaint to the Ministry of Justice stating that she heard from relatives of her son's cellmate that during the procedure of force-feeding he had been handcuffed to a heating appliance in the presence of guards and a guard dog, and had been held down by the guards while a special medical tube was used to feed him. Besides that she alleged that her son was beaten by the warden on duty on the first day of the hunger strike. On 30 October Mrs. Someone was informed by the Deputy Director of the Remand Centre in writing that according to an entry in the log-book of the establishment, on 26 September Mr. Someone was subjected to force-feeding due to loss of consciousness upon the decision of the head warden on duty; on the second day upon medical examination by the prison doctor he displayed 'some bruises' that could be caused because of his resistance. The reply was appealed to the competent prosecutor, who in his part refused to initiate procedures upon examination of the medical records mentioned with an argument that they did not indicate clearly that any crime had been committed.

On 15 February 2003 has been convicted for bribery to 6 years of imprisonment by the Bron Regional Court. The Court of Appeal confirmed the sentence on 30 May 2003. Although there were no criminal record or other evidence giving serious grounds to fear that he might resort to violence during the court hearings, during the trial Mr. Someone brought in handcuffs to court and held in a cage during the hearings, even though he was under guard. Due to his bad health conditions a doctor had to attend all sessions and had to

measure his blood pressure and provide other assistance through the bars of the cage in front of the public. The case was of a high-profile nature and that happened in full view of the media. Respective requests addressed by Mr. Someone's lawyer to judges were rejected with the reference to the regulations in force.

Mr. Someone has been transferred from the Remand Centre N3 to Prison N2 on 20 June 2003 accordingly.

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The audience to be split in three groups: applicants, respondent state agents, court. Each group has to prepare for performing their role during a moot court exercise using the ECHR/Case Law, the EPR and the CPT Standards.

Alternatively the audience can be asked to detect, specify elements of respective human rights violations based on the instruments concerned (ECHR, EPR, CPT Standards) and elaborate measures/recommendations to remedy and prevent them.

5.2. Commentaries to the Hypothetical Case on Article 3

- While strip-searches may be necessary on occasions to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner. Obliging the applicant to strip naked in the presence of a woman, and then touching his sexual organs and food with bare hands showed a clear lack of respect for the applicant, and diminished in effect his human dignity. It must have left him with feelings of anguish and inferiority capable of humiliating and debasing him. (**VALASINAS v. LITHUANIA, ECtHR Judgment of 2001, para. 117)**

- Rules 54.2-54.7 of the EUROPEAN PRISON RULES.

- It should also be noted that prisoners were regularly strip searched (a practice euphemistically referred to as "visitatie"). Such searches - which included anal inspections - were carried out at least once week on all prisoners, regardless of whether the persons concerned had had any contact with the outside world. Moreover, certain aspects of the regime (in particular, systematic strip searching) did not appear to respond to legitimate security needs, and are humiliating for prisoners. (Paras. 65 and 67 of the **CPT REPORT ON THE 1997 VISIT TO NETHERLANDS)**

- Having regard to the cumulative effects of the conditions in the cell, the lack of full medical assistance, the exposure to cigarette smoke, the inadequate food, the time spent in detention and to the specific impact which these conditions could have had on the applicant's health, the Court considers that the hardship the applicant endured appears to have exceeded the unavoidable level inherent in detention and finds that the resulting suffering

went beyond the threshold of severity under Article 3 of the Convention. (**OSTROVAR v. MOLDOVA, ECtHR Judgment of 2005, para. 89**)

- Rules 18.1-18.7; 19.1-19.6; 21; 39 of the **EUROPEAN PRISON RULES.**

- Paras. 46-50 of the **CPT 2ND GENERAL REPORT**; Paras. 12-15 of the **CPT 7th GENERAL REPORT**; Paras. 28; 30 of the **CPT 7th GENERAL REPORT**; Paras. 35-38; 53 of the **CPT 3RD GENERAL REPORT**.

- "**. . .** The Government have not demonstrated that there was a "medical necessity" established by the domestic authorities to force-feed the applicant. It can only therefore be assumed that the force-feeding was arbitrary. Procedural safeguards were not respected in the face of the applicant's conscious refusal to take food, when dispensing forced treatment against his will. Accordingly, it cannot be said that the authorities acted in the applicant's best interests in subjecting him to force-feeding.

As to the manner in which the applicant was fed, the Court assumes, in view of the submissions of the parties that the authorities complied with the manner of force-feeding prescribed by decree (see paragraph 62 above). However, in themselves the restraints applied – handcuffs, a mouth-widener (*роторозширювач*), a special rubber tube inserted into the food channel – in the event of resistance, with the use of force, could amount to torture within the meaning of Article 3 of the Convention, if there is no medical necessity (see paragraph 63 above - restraints in accordance with the European Prison Rules).

In the instant case, the Court finds that the force-feeding of the applicant, without any medical justification having been shown by the Government, using the equipment foreseen in the decree, but resisted by the applicant, constituted treatment of such a severe character warranting the characterization of torture." (**NEVMERZHITKY v. UKRAINE, ECtHR Judgment of 2005, paras. 96-98**)

- Rules of the 64.1-66; 68 of the **EUROPEAN PRISON RULES.**

- "In this connection, **the CPT wishes to stress that hunger strikes should be approached from a therapeutic rather than punitive standpoint**." (Para. 51 of the **CPT REPORT ON THE 2004 VISIT TO AUSTRIA)**

- The Court recalls that where an individual raises an arguable claim that he has been subjected to ill-treatment by the police or other agents of the State unlawfully and in breach of Article 3 of the Convention, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. Such an investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible (see, in relation to Article 2 of the Convention, *McCann v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49, §

161; *Kaya v. Turkey,* judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86; and *Yasa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2438, § 98). (**KUZNETSOV v. UKRAINE, ECtHR Judgment of 2003, para. 105**)

- Paras. 31-36 of the **CPT 14TH GENERAL REPORT**.

- The Court notes several additional factors. He was brought in handcuffs to court and held in a cage during the hearings, even though he was under guard and was wearing a surgical collar around his neck. His doctor had to measure his blood pressure through the bars of the cage in front of the public (see paragraphs 36, 37 and 45 above).

It further notes the absence of any criminal record or other evidence giving serious grounds to fear that he might resort to violence during the court hearings (see paragraph 9 above). It would appear to the Court that the above safety measures were not justified by the circumstances of the case, and they contributed to the humiliation of the applicant. Due account is also taken of the fact that (see paragraph 71 above) the case was of a high-profile nature and the above mentioned acts were – predictably – in full view of the public and the media (*Mouisel v. France*, no. 67263/01, § 47, ECHR 2002-IX). (**SARBAN v. MOLDOVA, ECtHR Judgment of 2005, paras. 88,89**)

- Conditions of detention in the police cells seen by the delegation for the first time in the course of the 1999 visit left a great deal to be desired. The police stations in Burgas, Nessebur, Pleven and Plovdiv each possessed a cell for holding detained persons. Located near the entrance to the police stations, these cells – intended for multi-occupancy - were small (4 to 6.5 m²) and poorly lit. Those in Burgas, Nessebur and Pleven were cage-like and located either under a central staircase or opposite the entrance to the building, as a result of which detained persons were exposed to the gaze of visitors to the police stations.

Further, the CPT recommends that efforts be made to find alternative facilities at Burgas, Nessebur, Pleven and Stara Zagora. Persons detained should not be kept in view of persons visiting the police station. (Paras. 49 and 51 of the **CPT REPORT ON THE 1999 VISIT TO BULGARIA)**
....

Although this section deals with police facilities, it indicates upon the same element that needs to be taken into consideration in analogous situations when the persons are under the authority of the prison administration.

VI. RIGHTS TO LIBERTY AND SECURITY OF PERSON AND TO RESPECT FOR PRIVATE AND FAMILY LIFE (ARTICLES 5 AND 8 OF THE ECHR)

6.1. Article 5 of the Convention: right to liberty and security of person

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*

3. *Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial..*

4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall*

be decided speedily by a court and his release ordered if the detention is not lawful.

5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.*

Article 5 is one of the most complex norms of the ECHR and actually represents a set of leading principles in this area. They can be classified and put into three groups or 'baskets'. One group of standards regulates grounds for deprivation of liberty and they are given in paragraph 1. Paragraphs 2, 3 and 4 provide for procedural guarantees. Paragraph 5 envisages the right to compensation in cases of violations of the right in question. Compensation is an important constituent, but due to the specificity of the training it is focused on penitentiary aspects of deprivation of liberty and some of procedural guarantees applicable only.

Basic notions of 'liberty' and 'security of person' included in the title of the Article are not considered as separate elements. In spite of the 'security' component, this right does not concern protection from attack by others (which is protected in Articles 2 and 3 of the European Convention) Liberty and security are two elements of one right that is understood as physical liberty and concern the deprivation of this physical liberty.

The right of the person to liberty and security may only be denied in line with the reasons stated in the text of Article 5, and the key words of this Article are "save in... cases".

There is no formal definition of the notion of deprivation of liberty. The Court highlighted that it is an intensity and level of limitations that matter. This approach is formulated in *Guzzardi v. Italy* (1980). Guzzardi was confined to and obliged to live on 2,5 sq. km of a small island. In spite of the fact that there were other such persons and it was possible to live on it with a family, the court paid attention to the fact that this measure was imposed by an order and led to isolation from the society. There was interesting development along the same line in more recent case *Lavents v. Latvia* (2002) that among other episodes concerned strict home arrest that included prohibition to leave the place and supervision by police. It was classified as detention. Penitentiary authorities are dealing with analogous schemes and arrangements sometimes. Accordingly it is important to note that Article 5 applies to them as well.
State officials are normally those who arrest or otherwise detain persons, however, it happens that natural persons may also deprive a person of liberty, and that government authorities instigate, consent or acquiesce such detention. The principle can be illustrated by case *Riera Blume and Others v. Spain* (1999). The detainees, who were members of a religious sect, were kept in a hotel by their relatives in order to ensure their psychiatric and psychological treatment within the framework of procedures held by the authorities.

When does the deprivation of liberty start?

It starts as from the moment when a person is given an indication by physical restraint, words or conduct that he or she is not free to leave. This moment does not depend on formal elements that could be set up by national laws, because in many countries respective time-limits are calculated as from the moment of drawing a protocol/minutes of detention. However, the Court takes into account periods as from which a person "is not free to leave". *K-F. v. Germany* (1997) is an authority in this regard. The person was taken from a flat to the police station, where the minutes of detention were compiled after one hour and 45 minutes after his apprehension in the flat. That period of one hour and 45 minutes was counted in by the Court accordingly.

What does the word "lawful" mean (a-f, Article 5.1)?

Here the matter concerns justification in deprivation of liberty of the person in compliance with the domestic law harmonized with the Convention.
In the case of K-F v. German, violation of Article 5 was found, because K-F was illegally detained for 40 minutes, because according to German legislation the maximum period of detention for identification of a suspect was 12 hours. This breach of domestic code of criminal procedures appeared to be enough for stating that the detention was unlawful. Besides that, this case illustrates that even short time periods do matter and are taken into account.

Lawfulness implies that national law must be accessible and foreseeable. In the case of *Amuur v. France* (1996), the breach in this regard was constituted by the fact that the detention of asylum seekers or illegal migrants was regulated by a classified document, not accessible to public. The second quality is less formal and concerns sufficient clarity and precision that minimizes risks of arbitrariness.

Any deprivation of liberty should fall under one of grounds stipulated in paragraph 1, "a, b, f"

a. *the lawful detention of a person after conviction by a competent court*;
b. *the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law*;
f. *the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition*.

When does the case involve illegal deprivation of liberty according to the Convention?

Example is provided by the case *Jecius v. Lithuania*, (2000). The applicant was detained under the provisions of special article of the CCP introduced at that time for the purposes of combating organized crime. It allowed detaining of a person for the period of up to 60 days, when believed that he or she could commit a heavy crime of respective category. The Court highlighted that these arrangements were not applied in the context of criminal procedures and for

bringing a person before the competent legal authority. Therefore it did not fall neither under para. c), nor other grounds given in the Article. This arrangement was found to be illegal under the Convention.

Although these illustrations in Article 5 do not pertain directly to prison administrations in terms of deprivation of liberty, their elements do fall under the responsibility of the institution officers. Rule 14 of the ERP states:

"*No person shall be admitted to or held in a prison as a prisoner without a valid commitment order, in accordance with national law*."

In *Labita v. Italy* (2000), Mr. Labita was held in the prison for one night after a court decision on his release. The authorities tried to justify that fact by arguments of formalizing his release. But the Court did not accept it, since there is no such ground in Article 5. The same principle applies to initial or whatever other periods of deprivation of liberty. Thus in the case *Menesheva v. Russia* (2006) the ECtHR found a violation in respect of 20 hours of initial deprivation of liberty of the applicant without any document or order. In addition, the detention in this case did not fall under any of grounds listed in paragraph 1 of Article 5.

The next set of issues directly falling under the responsibility of penitentiary authorities is related to records on deprivation of liberty. Its essence can be illustrated by the following extract from the judgment rendered by the ECtHR in the same case:

"*The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention*."

There is one important feature of the Convention law that can be used by penitentiary authorities as an argument against prison overcrowding. Although it does not depend on them, but they have to be prepared for operating with it. It concerns remand prisoners, first of all. The whole Article, including the wording incorporated in paragraph 3 that talks about release pending trial, has been interpreted as implying the 'presumption of freedom'. That is why it is required that all elements justifying deprivation of liberty should be present throughout all its period. In other words, they should be present continuously. Whenever 'dangers' of absconding or illegal interfering into the process or 'needs' of securing public order or preventing new crimes disappear, detainees concerned should be released. In *Nevmerzhitsky v. Ukraine* (2005) the applicant being a bank manager was accused of fraud and embezzlement. He was remanded for 2 years and 10 months. The Court stated that the argument for detaining him due to interference in the process had lost its weight, because after such period and investigative activities carried out that danger had minimized. All witnesses were questioned and so on. There was no need to keep him in detention further.

There is no formal limit in respect of length of remand periods and procedures in general. When meeting the duration of detention, the looks at nature of case, crimes concerned complexity and amount of procedural activities required. There should be convincing reasons for finding justifications for prolonging remand periods over several months. The Court counts periods of inactivity of competent authorities within procedures in question. Lack of staff and resources are not considered as acceptable reasons. To put it differently, arguments in respect of workload of investigators, judges, prosecutors related to other cases are not seen as a justification for any delays.

6.2. Article 8 states:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*

2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

Besides Article 8 of the ECHR the right and respective requirements are dealt in the EPR that contain the special section under the title 'Contact with the outside world', as well as in the CPT. As to the CPT, that is supposed to prevent ill-treatment, its mandate has been expanded over issues under the same heading too. The absolute majority of the CPT reports on visits to penitentiary establishments do contain paragraphs on this set of issues.

It is immediately clear that the wording of Article 8 is divided into two parts. The first part, that is, the first paragraph, accurately defines the rights guaranteed to the individual by the state - the right to respect private life, family life, home and correspondence. So, the first sentence requires respect for the rights. The second part of Article 8 clearly states as for these rights, in certain circumstances interference of public authorities to enjoy rights under Article 8 can be acceptable. States may legitimately restrict an individual in the enjoyment of these rights only if the interference in accordance with the law and is necessary in a democratic society in the interests of national security, public safety and economic well-being of the country, prevention of disorders or crime prevention, protection of health or morals or the protection rights and freedoms of others.

One should begin with the elements that may restrict the exercise of rights under the first sentence of Article 8.

The list of justified grounds (lawful or legitimate goals) for interference includes interests of national security, public safety or the economic well-being of the country, prevention of disorder or crime, protection of health or morals, protection of the rights and freedoms of others. Although the list is quite broad, the case law provides for its exhaustiveness and strict interpretation. In

the prison context it is not difficult to invoke the majority of these grounds. The most relevant are prevention of disorder or crime and protection of the rights of others. So, one or more of these legitimate aims should be present, but their existence does not resolve the matter.

Examples indicating when and how a legitimate goal would be justified:

- if collecting and storing information on individuals were "in the interest of national security";
- if tracking the correspondence of prisoners were aimed at preventing "disorder and crime",
- if removal of children from the orphanage in which they suffer violence or denial of care or contacts to one party were aimed at protecting the "health or morals" or "rights and freedoms of others";
- if ordering of expulsion or deportation were in the interests of "the economic welfare of the country."

The EPR contain the list of restrictions in contacts with the outer world. Thus, rule 24.2 refers to the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime.

In addition to the particular legitimate aims mentioned there are two general conditions that should be met. The first is the concept of legality that is denoted by the phrase 'in accordance with the law'. The second requirement is introduced by the wording of 'necessary in a democratic society'.

What does interference in accordance with the law mean?

Besides domestic legal framework being accessible, clear and foreseeable (similarly as in Article 5), there is an additional requirement to protect individuals against government arbitrariness. An additional requirement is that such law should be correctly applied and interpreted.[26] Thus, in the judgement *Malone v. UK (*1984), the Court found that the very existence of the laws and practice allowing for the system of secret interception of communication was interference with this right of individuals. This involved a law allowing interception of communications of individuals without a clear legal authorization to do so. In addition, details on interception of communications were not available, so that no control existed over the authorities performing these tasks.

As to the context of deprivation of liberty the same approach was applied in the case of *Wood v. the UK* (2004) that concerned the use of covert audio equipment installed in cells. It appears from the facts that there was no proper legal basis for it and there were no effective remedies under the domestic law to challenge them.

[26] Pla and Puncernau v. Andorra (2004.)

What does "necessary in a democratic society" mean?

The phrase 'necessary in a democratic society' and the respective criterion are very complex and difficult to understand for lawyers and legal practitioners even, so its introduction will be put most simply through practical examples.

Each member state enjoys a certain freedom to respond to various problematic phenomena in the country and every state may itself know what the measures it can take in a particular situation.

The response of the state can violate the rights of individuals if it was its response to the "pressing social need" in the country, such as for instance confiscation of land from an individual for the purpose of construction of 100 individual welfare housing units for vulnerable citizens. Here the response of the state was necessary in a democratic society, because it was responding to a pressing social need. Since states often cross borders of the freedom given to them in responding to pressing social phenomena, in violation of individual rights, therefore the Court in such situations always examines as to whether there is a balance between individual rights (individual land confiscation) and public interest on the other side (so that 100 vulnerable families can get a roof over their heads). Establishing a balance between individual rights and interests of the state is called the test of proportionality.

In *Schonenberger and Durmaz v. Switzerland* (1988) the authorities stopped the letter sent by the lawyer to the detained person under the pretext of interests of pending criminal proceedings. The letter contained advice as to the right to remain silent. The ECtHR did not accept this argument, since it did not pose a threat to the normal conduct of proceedings. Accordingly, there was no pressing social need for the interference.

In *Ploski v. Poland* (2002) the applicant held in detention on remand was refused to attend funerals of both of his parents who died within one month. The arguments for the interference were that the applicant "was a habitual offender whose return to the prison cannot be guaranteed" and that the charges relating to larceny involved "a significant danger to society". While stating that the Convention does not guarantee a detained person an unconditional right to leave to attend a funeral of a relative, the ECtHR questioned the proportionality of the interference suggesting that dangers could have been addressed by escorted leaves. In addition to that, the Court took into account that the charges brought against the applicant did not concern violent crime and that he could not be considered as a prisoner without any prospect of being released from a prison. In this regard the Court found that there was no pressing social need for such interference. The general conclusion was that it was not necessary in a democratic society and therefore constituted a breach of Article 8.

As to the scope of the right, the article points out four distinct constituents of the right: private and family lives, home and correspondence. However, they overlap, as in case of Article 5.

Private life concerns such matters as privacy, relations formed with others, sexual issues, physical and moral integrity, confidential records.

The concept of 'family' has autonomous meaning and what matters are factual 'ties' and formality such as marriage, blood relation etc are not decisive in the existence of a 'family'. Family are pairs living together and/or developing respective relationships between family members. The latter component is important in the prison context, since it applies to those who live apart, but have family ties.

Home is 'domicile' and it includes a house, other space or premises, where a person lives and works, i.e. applies to offices, for example. Normally they are owned, possessed or linked to persons concerned on other legitimate grounds.

As to the 'correspondence', it covers both written and spoken forms of private, business, professional or other communication (letters, telephone conversations etc).

Except of 'home' and in a varying degree all components of the right are of relevance in prisons. Due to the nature of imprisonment, most frequently interference takes place in respect of correspondence and maintenance of family ties.
Even private life in prisons has its own meaning. Thus, the ECtHR found a violation of the right in question in relation to audio recording of conversation of cellmates (Wood *v. the UK*). Even the EPR included ‘privacy’ in the list of requirements conditions of accommodation of prisoners and sanitary facilities are expected to meet (Rules 18.1, 19.3). In addition to tackling of these aspects in country reports, lack of privacy was one of concerns addressed by the CPT in respect of overcrowding and large capacity dormitories in its annual reports (Respectively paras. 13 and 29 of the CPT’s 7th and 11th General Reports).

Another danger that threatens to jeopardize the private life (Article 8 ECHR), and can be used in conditions of imprisonment, is the right to a healthy environment. This may involve various harmful activities of the state that can affect the health of prisoners: nuclear tests, the activities of private persons or organizations with the approval of the state, which pollute the environment and harm health, etc.

Would searches of prisoners’ rectal parts be justified?
Although it would mean interference with respect for private life, in case of stripping naked for the purpose of search, including a rectal examination, which is done for security reasons, this interference would be justified. The justification for such actions can be explained by the need to prevent crime and disorder in prisons. In the case of *McFeeley v. United Kingdom* (1980) for example, it was concluded that frequent stripping naked for the purpose of search is required by the exceptional security regime at Maze prison in Northern Ireland, where experience has shown that it is possible to smuggle a variety of dangerous objects. It was concluded that, although the

circumstances are humiliating, they are not intentionally degrading (Article 3 ECHR), particularly because there is no physical contact and no presence of third party officials.

Although legal detention is serious by itself, prisoners enjoy the right to respect for their family life. The main problems are with 'lawfulness' due to non-existence of detailed legal norms to limit or ban. In the majority of such cases the Court did not examine the issue of necessity in a democratic society, being satisfied with the findings on lawfulness. (*Kuznetsov v. Ukraine* (2003) and so on). Same unlimited discretion clearly would not meet respective standards as well.

However, there are many judgments, where the ECtHR found no violation in this regard. Thus, in *Messina v. Italy* (*No. 2*) (2000) the Court did not find a violation in respect of the restrictions on family visits and imposed measures for the supervision, separation from visitors by a glass partition, applied to prisoners associated with the Mafia. It accepted the argument of their dangerousness, took into account the guidelines promulgated by the Parliament and the possibility of relaxing the restrictions. So, even such strong limitations in certain circumstances may be both lawful and necessary in a democratic society.

The CPT in its turn has stated that it can see no justification for indiscriminately applying restrictions to all prisoners subject to a specific type of sentence, without giving due consideration to the individual risk they may (or may not) present.

Although the Court has held that the right to family life does not guarantee the right for prisoners to be granted conjugal visits with their spouses (*Aliev v. Ukraine* (2003)), it does not mean that such policy would be welcome. Thus, the EPR encourage the authorities to allow prisoners to maintain and develop family relationships in as normal a manner as possible (Rule 24.4).

For the reasons listed in paragraph 2 of article 8, when genuinely present, letters sent and received by prisoners or telephone conversations may be limited in numbers, stopped, intercepted, controlled, and censored/tapped accordingly. Judging from the factual circumstances of the cases considered by the ECtHR main problems arise with regard to existence of pressing social need and proportionality, but it often satisfies itself by finding a violation in respect of the lawfulness criteria.

Due to additional issues involved, special attention is paid to the correspondence of persons deprived of their liberty with their lawyers and judicial or other governmental authorities, as well as international bodies such as the ECtHR or CPT. Reading of the correspondence with lawyers could be justified only if the authorities have reasonable cause to believe that the privilege is being abused. Illicit enclosures can be checked by sealing or opening the letter in the presence of the prisoner.

As far as lawyers are concerned, their safeguarding role in respect other rights and the right to fair trail first of all, it is specially privileged. This issue was one of the main points in the *Golder* case. It concerned refusal to correspond with a solicitor regarding initiation of civil proceedings against the prison authorities. The ECtHR held that impeding a prisoner from even initiating such correspondence amounted to a noticeable interference with the right. Different kind of barrier (refusal to provide with writing paper, stamps and envelopes) was scrutinized by the Court in *Cotlet v. Romania* (2003). The prisoner faced these difficulties when maintaining communication with the ECtHR in respect of his application.

Normally there are no grounds that could be invoked for controlling (check of enclosures, censorship) and stopping of correspondence with judicial or other governmental authorities, as well as international bodies. This assertion is reflected in the EPR. Rule 24.3 envisages that national law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.

There are several facets highlighted by the ECtHR that have to be taken into account by penitentiary authorities in respect of prisoners' correspondence in general. Its control for an unlimited time and for no more specific reasons than an accusation for serious offences as not meeting the test of lawfulness (lack of certainty and entailed low degree of protection) was found to be a violation of Article 8 in *Lavents v. Latvia* (2002). The same kind of broad discretion to control general correspondence in combination with any independent review process formed a violation in *Petra v. Romania* (1998).

It should be mentioned that the majority of such nuances could be found neither in the EPR nor in the CPT jurisprudence. That increases the importance of the Convention law for penitentiary authorities of the States Parties. However, the following standard recommendation from the CPT's reports helps to understand the essence of the European approach to these issues and can serve as a closing point to the presentation::

"*In the CPT's view, granting of visits and correspondence should be the norm, their refusal the exception*."

6.3 Article 5 of the ECHR

Cases - Containing violations of the European Convention pursuant to the articles above? What are the elements of violation? Which texts does it refer to? (ECHR, EPR, CPT standards)? What measures would you suggest to fix them?

Mr. Z. was sentenced in 1967 to life in prison at the age of 17 years, not on the basis of seriousness of his offense, but because he was currently dangerous for the society. The judge who passed the sentence explicitly stated that this situation may change and therefore should be subject to revision, which would, in case of need, allow his earlier release. In 1976, it

was decided that he be released on parole. In 1977, after he had committed a series of offences, including a series of less serious violent acts, the competent cabinet minister called off the parole and he was taken into custody. The English law considers that a person sentenced to life in prison can never again (unless they receive a royal pardon) receive unconditional freedom. The legality of the decision to withdraw a prisoner for life under parole is reviewed by the Parole Committee, which is not required to present to the applicant all the material it is in possession of. The complainant is also entitled to judicial review. It shall not consider whether the detention in 1977 was in accordance with, and therefore justifiable by, the goals of the sentence in fixed duration imposed in 1966.

The Italian police arrested Mr. B. in 1971 on charges that he had kidnapped and killed a citizen of Switzerland in Italy. In 1975, he was sentenced in absentia to a life prison sentence and was issued an international warrant against. He was arrested in France, but the courts rejected his extradition on the basis of his trial in absentia, which does not comply with French standards. However, one night he was taken by French police officers in plainclothes, who had a deportation order, the copy of which he did not receive, and drove him to the Swiss border, although the Spanish border was closer by, and in any case he was supposed to have a choice of destination. There he was handed over to the Swiss police, who waited in the car with no insignia. He is now serving life in prison in Italy. Switzerland and Italy have a reciprocal agreement on deportation.

Mr. C is an Estonian citizen; he was convicted of a crime in Finland. According to the Convention on the Transfer of Sentenced Persons and its supplementary Protocol, the Finnish government planned to transfer him back to the country of origin in order for him to serve his sentence. In Finland, he would expect to be conditionally released after serving half of the sentence. In Estonia, he would have to wait until he has served two thirds of the sentence before being taken into consideration, and a smaller number of such decisions are passed there than in Finland. He argued that he would probably have to spend more time in prison should he be transferred back to Estonia.

Mr. F was arrested and placed into custody in connection with an offence involving violence. At the time of offence and at the time of court appearance, the domestic court held that he was seriously mentally distraught, up to the point where he was unable to control his actions, which was exacerbated by problems with drugs and alcohol. Accordingly, the court ordered him temporarily detained in a psychiatric wing of the prison, awaiting the decision of the mental health board in relation to the most appropriate place of detention. Within two months of this order, the mental health board decided that he be instead transferred to the centre for social protection. The law provides no time limit for this transfer. The recommendation was not carried out in seven months, during which time the applicant remained at the prison psychiatric wing. The sworn statements of medical personnel from the wing show that the regime was not therapeutic, with too many inmates suffering from an enormous degree of mental health problems, including ordinary

prisoners who suffer from refraining from drug use, shortage of staff, and a very strict regime.

Mr. G was sentenced to prison. It was ruled that his abilities are poorly developed so that his prison sentence was combined with an order to "be seen" at detention at the "prison clinic" (which is not a sentence execution place, but it is intended for treatment of persons and protection of society). Upon completion of the prison sentence, this order came into force. Mr. G, however, was not transferred to the prison clinic, but into the detention centre, where he spent 15 months. Keeping at the detention centre until the point of transfer is permitted by domestic law. For several years, it was known that there were problems with providing an adequate number of places, and the number of "to be seen" orders was rapidly growing.

6.4. Article 8 of the ECHR

Cases - Containing violations of the European Convention pursuant to the articles above? What are the elements of violation? Which texts does it refer to? (ECHR, EPR, CPT standards)? What measures would you suggest to fix them?

The sentenced prisoner decides to file a lawsuit against prison authorities. The applicable law requires him to turn to the government minister for permission to correspond with his lawyer in order to explore legal ways he can use. The permission was denied.

A group of sentenced prisoners corresponded to one another as well with another person, from the outside. They realized that all of their letters did not reach the recipients. Nobody told them that certain letters were confiscated. The law allows the correspondence of prisoners to be examined "in order to check the material that could be detrimental to prison security or the security of persons, or is in some other way criminal in nature."

The prisoner serving the sentence entered into correspondence with the European Commission (predecessor of the European Court), alleging that prison staff had mistreated him. His letters were opened, which is in accordance with domestic law. However, the prisoner claimed that the goal of the prison in opening of his letter was not "to ascertain whether there is material which could be detrimental to prison security or the security of others or is otherwise criminal in nature", but to in order for the prison to obtain information on his allegations and the response from the Commission before he did.

The law in the State of X stipulates that all mail of prisoners, regardless of who it is addressed to, is subject to censorship of the authorities conducting criminal procedures. Inmate N wrote to the Ombudsman, complaining of his treatment in prison. This letter was opened and its transfer to the Ombudsman was delayed.

C is serving a sentence for murder. He filed an application to the former Commission (predecessor of the Court). Later, his case was submitted to the Court. The prison did not supply inmates with writing paper, stamps and envelopes, and C had no other way to obtain these. This hindered the conduct of the case.

A number of people were arrested on suspicion of having committed a series of crimes. They were detained in a police cell equipped with special secret audio equipment in the hope that they would discuss the reasons for their arrest and that the conversation that arises from would assist in ensuring their conviction in a criminal case. Their conversations while held at the police were recorded and the tapes formed the basis for the charges. There is no legislation in place that regulates the recording of conversations in police cells.

Because of the serious legal grounds concerning public order and security after an escalation of aggressive and ruthless campaign by violent students, the government issued a secret decree introducing the following restrictions against these categories of prisoners: the prohibition of using the phone; censorship of all incoming and outgoing mail; restrictions on visits of family members (they were allowed to carry out the visit only on the basis of a written authorization given by the person or authority responsible for his or her case). Prison authorities did not inform either Mr. M. or his relatives about the restrictions and the need to send a request to obtain authorization to visit. As a result, Mr. M. and his relatives were allowed to communicate only through written correspondence.

An elderly mafia member was serving a long-term prison sentence. Because of his dangerousness and his mafia connections, he was subjected to a special prison regime. Bearing in mind the important role that families play in the Mafia, he was only rarely allowed to see his family. Visits took place behind glass partitions.

Mr. Z was a prisoner of low security level, and was held in a prison which included the inmates of all security levels. They all used the same room for visits, which contains individual booths separated by glass.

Mr. P was sentenced to death and waiting execution of his death penalty. His family saw him three times a year. When they met, it was through the glass. This was in accordance with the specific conditions of imprisonment pending the execution of the death penalty, administered based on internal unpublished instructions issued by the Minister of Justice, the Supreme Prosecutor and the Supreme Court, and not accessible to the public.

Mr. Y was in remand. Both of his parents died within a month of one another. He asked for permission to attend their funerals, but it was denied.

While in prison, Mr. H had a blood test taken by the prison doctor, which revealed that he had HIV/AIDS. This information was immediately given to the prison staff, in order to ensure that he does not infect them or other prisoners.

Mr. X was detained for theft. He had a long criminal record and suffered from a personality disorder. He wanted to marry, but his permission was denied on the grounds that if convicted, he would likely receive a long prison sentence, perhaps even one of indefinite duration; due to his personality disorder, his desire to marry may not be permanent; and wedding of a person in a prison facility interferes with the maintenance of order.

6.5. Hypothetical case on Articles 5 and 8 of the ECHR

Mr. Mladic was born in 1987 and studied at the University of Bron. On 12 September 2002, around noon, he was detained by police together with some 300 other youngsters near the university compound after the peaceful manifestation against governmental plans to increase tuition fees. This was the first event arranged by students of the University. It was preceded by extremely violent demonstrations in the capital that had lead to adoption of special law providing for preventive detention of participants of violent manifestations for the period up to 30 days. Such detention could be ordered by a court within 48 hours on the basis of police protocols.

Because of the number of detained persons and lack of available space at police establishments, upon an oral agreement between the Head of police and the Director of the Remand Centre N3 of the Ministry of Justice Mr. Mladic and 55 other detainees were admitted to the latter 'in the light of a pressing need'. Temporary arrangements entailed their admission without an arrest warrant or sentence that according to the Law on Enforcement of Penal Sanctions was obligatory for an admission to any of penitentiary establishments. All detainees were allocated to the admission unit. The only document drawn up by the administration of the Remand Centre N3 in this regard was a list indicating the names compiled by the next morning. That list subsequently was used by the police for drawing up necessary protocols. Due to lack of police staff that was overloaded with processing cases against the main group of detainees, it was done on 14 September at 9 a.m. Mr. Mladic and 55 other detainees held at the Remand Centre N3 were brought before a judge on 16 September in the late afternoon. The order on Mr. Mladic's preventive detention for 30 days was issued at 8 p.m. and indicated that the term should be counted as from 9 a.m. of September 14. On that basis he was returned to the Remand Centre N3, when he was officially recorded as an inmate of the establishment.

On the next day Mr. Mladic's lawyer lodged an appeal against the preventive order that was considered by the Court of Appeals on 12 October 2002. The Court ordered Mr. Mladic's release due to irregularities in the police protocol on his detention. The decision was pronounced at 5.30 p.m. After the hearing Mr. Mladic was taken back to the Remand Centre N3 for 'processing his release'. However, it was postponed until next morning due to the fact that working hours of the administrative personnel had finished by that time.

Mr. Mladic was released from the Remand Centre N3 at 9 a.m. on 13 October 2002, but was apprehended by the police at the gate and placed under

custody for charges of organizing an unlawful extremist group. On 15 October 2002 the Bron Regional Court remanded him for 2 months accordingly.

Because of serious public-order and safety considerations following an escalation of an aggressive and ruthless campaign by the violent students the Government had issued a classified decree introducing the following restrictions against this category of prisoners: a ban on the use of the telephone; censorship of all inward and outward correspondence; restrictions on visits from members of the family (they were allowed only on the basis of a written authorization given by the person or authority in charge of his or her case). The authorities did not inform either Mr. Mladic or his relatives about restrictions. Several requests regarding an authorization for a visit addressed to different bodies (police, judges and the prison administration) were denied without an explanation. As a result, Mr. Mladic and his relatives were allowed to communicate by means of written correspondence only.

On 12 December 2002 Mr. Mladic was convicted to 3 years of imprisonment. He did not appeal against the judgment and was transferred to Prison N2 on 5 January 2003. The restrictions in respect of contacts with outside world were lifted against him and other prisoners related to the events in question after the repeal of the Decree on 1 March 2003.

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The audience to be split in three groups: applicants, respondent state agents, court. Each group has to prepare for performing their role during a moot court exercise using the ECHR/Case Law, the EPR and the CPT Standards.

Alternatively the audience can be asked to detect, specify elements of respective human rights violations based on the instruments concerned (ECHR, EPR, CPT Standards) and elaborate measures/recommendations to remedy and prevent them.

6.6. Commentaries to the Hypothetical Case on Articles 5 and 8

- The Court observes that a person may be deprived of his liberty only for the purposes specified in Article 5 § 1. A person may be detained within the meaning of Article 5 § 1 (c) only in the context of criminal proceedings, for the purpose of bringing him before the competent legal authority on suspicion of his having committed an offence (see, *mutatis mutandis*, the Lawless v. Ireland judgment of 1 July 1961, Series A no. 3, pp. 51-52, § 14, and the Ciulla v. Italy judgment of 22 February 1989, Series A no. 148, pp. 16-18, §§ 38-41).

The Court therefore considers that preventive detention of the kind found in the present case is not permitted by Article 5 § 1 (c), Article 50-1 of the Code of Criminal Procedure finding no reflection in any provision of Article 5 § 1. (**JECIUS v. LITHUANIA, ECtHR Judgment of 2000, paras. 50,51)**

- The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention. (**MENESHEVA v. RUSSIA, ECtHR Judgment of 2006, para. 87**)

- Since the maximum period of detention was known in advance, the authorities responsible for the detention were under a duty to take all necessary precautions to ensure that the permitted duration was not exceeded. (**K.-F. v. GERMANY, ECtHR Judgment of 1997, para. 72)**

- The Court observes, however, that in the instant case the delay in the applicant's release was only partly attributable to the need for the relevant administrative formalities to be carried out. The additional delay in releasing the applicant between 12.25 a.m. and the morning of 13 November 1993 was caused by the registration officer's absence. It was only on the latter's return that it was possible to verify whether any other reasons existed for keeping the applicant in detention and to put in hand the other administrative formalities required on release… (**LABITA v. ITALY, ECtHR Judgment of 2000, paras. 170,172)**

- Rules 14-16 of the **EUROPEAN PRISON RULES.**

- Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5 (art. 5), namely to protect the individual from arbitrariness. . .

In laying down that any deprivation of liberty must be effected "in accordance with a procedure prescribed by law", Article 5 para. 1 (art. 5-1) primarily requires any arrest or detention to have a legal basis in domestic law. However, these words do not merely refer back to domestic law; like the expressions "in accordance with the law" and "prescribed by law" in the second paragraphs of Articles 8 to 11 (art. 8-2, art. 9-2, art. 10-2, art. 11-2), they also relate to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. (**AMUUR v. FRANCE, ECtHR Judgment of 1996, para. 50)**

- In view of the dismissal of the requests lodged by the applicant with the Prosecutor's Office and the domestic courts in which he demanded the right to receive visits from his family . . ., the Court considers that there was an interference with the applicant's right to have contacts with his wife and daughter.

For similar reasons as in the case of Article 18 . . . the Court is not satisfied that this provision met the requirement of foresee ability. Accordingly, it considers that Article 19 of the Law on Pre-Trial Detention does not indicate

with reasonable clarity the scope and manner of exercise of discretion conferred on the public authorities in respect of restrictions on prisoners' contacts with family and other persons and that therefore the interference complained of was not “in accordance with the law”. (**OSTROVAR v. MOLDOVA, ECtHR Judgment of 2005, paras. 106-107**)

- . . . the Court concludes that Polish law as it stood at the material time, did not indicate with reasonable clarity the scope and manner of exercise of discretion conferred on the public authorities in respect of control of prisoners' correspondence. It follows that the interference complained of was not “in accordance with the law". (**NIEDBALA v. POLAND, ECtHR Judgment of 2000, para. 82**)

Rules 24.1, 24.2 of the **EUROPEAN PRISON RULES.**

VII. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AS PART OF THE EUROPEAN SYSTEM FOR PROTECTION OF HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY

Essence of the mechanism, working methods, standards and interaction with the ECtHR

The European Convention on Human Rights is an instrument that is more general in nature and covers a broader range of rights and freedoms, and the prohibition of torture is one of its elements (Art. 3). However, it turned out that it is not enough for the Court of Human Rights to only subsequently find violations of the prohibition of torture and ill-treatment. Therefore, it was decided to supplement the European Convention on Human Rights with a supplementary international instrument - the European Convention for thr Prevention of Torture.

The European Convention for the Prevention of Torture is an instrument that has been formally instituted as protection against torture, specifically for persons who are deprived of liberty. The prison administration and prison officers bear the key responsibility in terms of its supervisory authority – the CPT. The cooperation means not only cooperation during the visit by the CPT, but also the daily use of CPT recommendations and standards.

How does the CPT proceed?

The Committee acts on a strictly prevention basis, but it is also more steadfast than all other international mechanisms. It carries out visits to places for detention in the States Parties in order to examine the treatment of persons deprived of liberty who are held there, and prepares reports on its findings and makes recommendations which it forwards to the visited state. This report is confidential, but may be published with the consent of the state. In exceptional

circumstances, when the state party does not cooperate with the Committee or rejects its recommendations, the Committee may decide to publish a press release that refers to that State.

The basic goal of the overall procedure is not so much to condemn states, but to observe the problematic areas and to supply recommendations for improved protection of persons deprived of liberty against torture and inhuman or degrading treatment or punishment.

The CPT organizes its visits:

- at any time
- it can visit any place in the state where persons deprived of liberty are held in accordance with the law. These may be police stations, prisons, detention units, military camps, psychiatric hospitals, places for residence of foreign nationals, transit zones at airports, detoxification centres, and homes for children and the elderly.
- CPT is entitled to move around the said institutions without restriction
- CPT is entitled to conduct interviews with persons deprived of liberty, specifically without the attendance of witnesses
- CPT is entitled to communicate freely with anyone who believes they can provide information about torture or ill-treatment, without the consent of the state.

The conditions for the CPT visits:

The visits by the Committee may include:
• Periodic - these are carried out regularly in all Member States
• Ad hoc (as needed) – these are carried out in response to serious allegations about an urgent problem in the country and subsequent (follow-up) visits may be organized at any time, when the results of earlier studies so require

CPT has developed the procedure for notification of <u>periodic visits</u>:

1. it announces at the beginning of the year which countries it wants to visit,
2. it announces its visit approx. 14 days in advance, and proposes the dates of visit
3. several days before the visit, it sends to the state the list of places it wants to visit.

During the visit, the delegation may decide to carry out unannounced visits to places it has not previously indicated. The notification practice does not apply to <u>ad hoc visits</u>, which can be carried out in a very short time.

States have the option of referring to a limited number of exceptional reasons (national defence, public safety, serious disturbance of order at penitentiary institutions; or because at a given moment an important hearing is taking place regarding a serious crime) to postpone visits, but not to prevent them.

CPT does not deal with individual cases and complaints about the alleged ill-treatment or torture. This falls within the jurisdiction of the European Court of Human Rights, which is almost exclusively concerned with individual claims. However, complaints of individuals can be used as for studies or a pretext for research of some special practice in a state, which is why ad-hoc visits are frequent, in order to intervene in the state.

After each visit, the Committee should draw up a report on the facts found during the visit, which it transmits to the member state with all of the recommendations it deems necessary.

Obligations of each signatory state

There is no mention of the obligations of member states to follow the recommendations, and no consequences have been envisaged for their non-compliance within the Convention. However, the principle of mutual cooperation established by Article 3 ECPT includes, if not a legal obligation, then an assumption that the authorities would take measures to implement the recommendations. Article 10 (2) ECPT states that if a member state does not cooperate or refuses to improve the situation in terms of the CPT recommendations, the CPT may make a public statement on the matter. The CPT has used this tool only five times so far: in 1992 and 1996 in relation to Turkey and in 2001, 2003 and March 2007 in terms of Russia, namely, the situation in the Republic of Chechnya.

The CPT was able to resolve an absolute majority of problems by simply threatening and mentioning the option to publicly present a problem in the country.

Secrecy of Reports and Data

The reports that are prepared after visits are sent only to the authorities involved; the information collected about the visit, the report and consultations with the interested parties are confidential; the Committee members, experts and other persons assisting the CPT are required, during and after their term of office, to maintain the confidentiality of facts or information which they became aware during the performance of their functions. These reports should be published but upon the request of the state. Moreover, Article 11 (2) stipulating the publication of the reports states that this must be done together with any comments provided by the authorities whenever they so request.

The request on the part of the State to publish the report is seen as example of the willingness to resolve problems and to talk about them openly. Unfortunately, no state is perfect in this regard, because ill-treatment or even violence have been found in all member states. However, it should be noted that the CPT is now seen as an international partner that assists, not only as an inspector.

The relation between the CPT and ECtHR

The CPT is not bound by the ECtHR case law, but it is used as a starting point in its work. The approaches and universal standards of judicial practice are common both to the court and the CPT, but the latter goes further in detailing them with a view to practical implementation and the change sought by the preventive character of its work. The CPT touches not only upon the prohibition of torture or inhuman or degrading treatment or punishment, but also upon some other issues, including the elements of fair trial and freedom and security of persons. The circumstances and legal framework of detention is seen as the key issues to successful prevention of these violations.

In recent years, the texts of the CPT have been increasingly introduced into the ECtHR procedures. The reports and standards of the CPT have been stated in almost every recent ECtHR judgment in connection with the deprivation of liberty issue.

CPT's reports were given almost equal importance as the ECtHR case law, considering that based on the recommendations even laws in countries have been changed adjusted with CPT standards. It is therefore of great importance to follow the CPT's standards issued for other countries, too.

VIII. EUROPEAN PRISON RULES

Human rights, as defined for all signatories to the European Convention on Human Rights, are not acquired. They belong to every individual in the state, regardless of their status of prisoners. It follows, therefore, that prisoners do not have to do anything in order to acquire the rights to which they are entitled. The Convention provides protection through a series of rights, most of which are in a relative manner in accordance with the requirements of order and security, but some are absolute and can it is not possible to interfere with them.

Prisons are managed in accordance with the recently adopted (in January 2006) EPR that have set forth reasonable standards for the European member states to be implemented in prisons. The regulations, policies and rules must be in every way compatible with the ECHR and EPR thus convincing the Member States that they are acting within the prison system suitable to be considered acceptable.

Prison staff works within this context. They are not required to recall all of the European Prison Rules or to quote them freely while doing their complex jobs within the prison environments. They are however required to have a working knowledge of the areas covered by the EPR and to adequately consider how EPR affect their roles and responsibilities. These questions and answers provide some brief information that can help meet these needs. Copies of the EPR are fully accessible through the web site of the Council of Europe.

8.1.
Q. Where did the EPR come from?

A. Recognizing that prisoners are a politically vulnerable group in relation to potential human rights violations, Resolution No. R(73)5 of the Committee of Ministers in 1973, the European Standard Minimum Rules for the Treatment of Prisoners were introduced These standards were based on the UN Standard Minimum Rules for the Treatment of Prisoners, which were initially formulated in 1955. In 1987, the European Rules were revised and updated to provide a modern framework for the work of prisons in European countries.

The 2006 Rules further updated this framework to reflect the changes and development of laws and practices in prison and the needs and aspirations of the new member states. These rules also had to take into account the increasing number of decisions by the European Court of Human Rights related to prisons.

The revised rules were presented as recommendations – Rec (2006)2 of the Committee of Ministers and they were substantiated with references to prisons as the last option, in believing that the number of prison population should be reduced to the lowest possible levels.

8.2.
Q. What is their legal status?

A. The European Court of Justice and CPT now regularly refer to the EPR. The latest update provides great help to these bodies as well as to national courts and authorities in charge of inspection. Of course, not all member states at the same level in terms of implementing these rules - for some countries they remain something should be strived for, while other countries are more developed. These rules indeed provide the guidelines to all countries in modernizing their laws on prisons and prison administration.

8.3
Q. How many are there and do I have to know them all?
A. The European Prison Rules are divided into nine parts –

Part 1 (Rules 1-13) set the basic principles that should support fair and legitimate prison administration.

Part 2 (Rules 14-38) covers conditions of imprisonment, touching upon issues so different as the standards of accommodation, clothing and bedding, nutrition, work and contact with the outside world.

Part 3 (Rules 39-48) deals with the provision of health care in prisons and with the necessary compliance with national health policy, including the resolution of mental health issues.

Part 4 (Rules 49-70) discusses the issues of order, pointing out as an important moment the need to balance safety, security, discipline and the

need to treat prisoners humanely and with respect. This section also deals with a very important issue regarding the use of force in prisons, while realizing the potential for excessive use and improper treatment of prisoners as a vulnerable group, taken care of by the state.

Part 5 (Rules 71-91) is entitled "Management and Staff“ and makes recommendations as to the selection, training and safety, employment of prison workers and prison management. This section also emphasizes that private contractors that run prisons are also governed by the EPR.

Part 6 (Rules 92-93) - although a short section, it considers the organization of inspection and supervision of prisons, both by government agencies as well as, very importantly, by independent bodies as an essential additional guarantee to prevent the ill-treatment of prisoners.

Part 7 (Rules 94-101) specifically mentions provisions for untried prisoners, because their rights have not yet been limited by a conviction. These should be considered innocent, treated as such and therefore there specific guarantees in place, so the state has been imposed with positive obligations to help such prisoners prepare their legal defence.

Part 8 (Rules 102-107) elaborates on the goal of any regime in terms of sentenced prisoners: development of individual responsibility and prevention of repeated violations of law. Organizing the judgement in such a way that it deals with the needs of prisoners and reduces the risks they pose to the community are underlined here. Work, education, programs and plans for release have been identified as a key component of positive prison regime.

Part 9 (Rule 108) underlines the need to introduce mechanisms that will ensure that the EPR are regularly updated.

Each member state will at different stages be related with the implementation of the rules, but they provide a mould for the administration of future development and policy design.

It is crucial that prison staff have the confidence to work with these rules and to uses them appropriately in order to influence their daily contact with prisoners and improved formation of daily practice in prisons. They are not intended to be kept in a closet or on a shelf, but are seen as a practical tool for prison practitioners as well as for policy makers.

8.4.

Q. Is there anything that pertains to provisions for staff?

A. As already mentioned, Part 5 of the EPR deals with staff and administration. A special section of this provision emphasizes the key role of staff at the front line in dealing with prisoners in a positive environment. The staff employed by civilian authorities rather than by military authorities is required to treat prisoners decently and humanely, at the same time maintaining safety, order, and providing opportunities for prisoners to address

their needs in order to assist in successful reintegration. This is a complex set of requirements and just those who possess great skill and personal integrity should be chosen to perform this role on behalf of the state.

Once selected, the staff should have job security, decent wages and working conditions and adequate and ongoing training, including the European Prison Rules and their associated rules.

In short, the ethical dimension of work in prison has to guide the approach in appointment of staff and the manner in which prison administrators maintain their facilities.

8.5.
Q. Who supervises compliance?

A. Of course, the EPR is not the only one. There are series international human rights standards that apply to the management and operation of prisons. These include UN conventions and European conventions, protocols and standards. However, the contents of different standards are not contradictory. They are based on the principles of humanity, security, good order, and rehabilitation / reintegration.

8.6.
Q. Where can I find more information?

A. On the Council of Europe web-site (www.coe.int/)

Council of Europe
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European Union
Union européenne

Joint Project between
the European Union and the Council of Europe

"Efficient Prison Management in Bosnia and Herzegovina"

III. IMPROVING THE SITUATION OF VULNERABLE AND HIGH-RISK PRISONERS

TREATMENT GUIDELINES AND PROGRAMS IN PRISONS IN BOSNIA AND HERZEGOVINA

- **FOR WOMEN PRISONERS IN PRISONS**
- **DRUG MISUSERS IN PRISONS**
- **SEX OFFENDERS IN PRISONS**
- **HIGH RISK PRISONERS SERVING SENTENCES IN PRISONS**
- **AND ADMISSION PROCEDURE AND SENTENCE PLANNING IN PRISONS**

Sarajevo, April 2010

Prepared by the following Working Group members

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"Treatment guidelines and programs in prisons in Bosnia and Herzegovina" is the final document of the project.

CONTENTS

FOREWORD

This document reflects the situation as of 22 April 2010 and constitutes the "Guidelines for development of programs for groups of prisoners with special needs arising from their vulnerability: imprisoned women, drug misusers, sex offenders, high-risk prisoner groups; and for the process of their admission to prison" (hereinafter referred to as: vulnerable groups). This document is the result of activities of the working group no. 3, "Improvement of situation of vulnerable and high-risk prisoner groups" within a Joint Project between the European Union and the Council of Europe, "Efficient Prison Management in Bosnia and Herzegovina", implemented between 01 February 2009 and 31 July 2010.

We would now like to present this document, which was designed to improve options for introducing a variety of programs for vulnerable groups, including recommendations for possible legislative solutions, as well as guidelines that will contribute to their introduction into practice.

It should also be remembered that this document is not a final document. It is a living document which can be upgraded as the needs arise or as the programs evolves in time.

We trust that this document will serve the authorities well in the years to come.

Finally, we would like to express our appreciation to the competent ministries for their support of this project in its entirety.

I. INTRODUCTION

Vulnerable groups of prisoners are a special group of sentenced persons with special needs which the prison system should address with an appropriate treatment that meets those needs. This document deals only with certain vulnerable groups, such as: imprisoned women, sex offenders, drug misusers and high-risk prisoners, and with the process of their admission to serve sentence.

As part of these activities, documents have been prepared presenting treatment guidelines and programs. Further work on implementation will require collaboration with various ministries, the local community, nongovernmental organizations and other relevant bodies and organizations. The introduction of the programs will also require a close co-operation of the prison system with appropriate institutions in the community, in addition to appropriate decisions being taken by relevant ministries.

This document may present authorities in charge of prisons with a challenge requiring them to expand resources and infrastructure, to improve motivation,

professionalism and knowledge of the staff working with prisoners, and above all to respect human rights and implement EU standards.
The document is structured such that all its constituent parts may be used independently – both those on individual vulnerable groups of prisoners and those on the admission process.

II. TREATMENT OF VULNERABLE GROUPS OF PRISONERS IN EUROPEAN COUNTRIES

European countries pay a great deal of attention to programs available to all prisoners, in particular to various vulnerable groups of prisoners. These programs are significant in that they increase capacity for control and social skills of a prisoner, and that they reduce the risk of repeated crimes and prisoners' potential association with the issue of drugs and violent behaviour.

When discussing programs, we refer to a set of activities with the psycho-educational, therapeutic purposes and methods of skills training. The most successful programs are usually based on the social cognitive learning model. These programs are based on scientific evidence and they use effective methods and are accredited, including supervision of staff that implements the programs.

Programs that are in use in various prison systems may be classified into the following groups:

- general programs;
- programs for perpetrators of violent crimes;
- programs for drug misusers;
- programs for sex offenders; and
- motivational programs.

At this point we will not deal with programs for work, education and vocational training or with leisure activity programs. Many prison systems include special departments for program development, and many countries purchase programs from other systems and adapt them to the situation in their own prison system.

DEFINITION

Vulnerable groups of prisoners are groups[27] that, due to age, gender, ethnicity, health reasons or legal or political status, face an increased risk to their personal and general safety or well-being as a result of serving their prison sentence. This group may include imprisoned juveniles, women, mothers and babies, mentally ill persons or persons with developmental delays, disabled persons, foreign nationals, imprisoned members of minorities or indigenous populations, persons condemned to death, older inmates, pre-

[27] Human Rights and Vulnerable Groups, Training Manual No. 1, Penal Reform International

trial detainees, drug misusers, lesbian, homosexual, bisexual and transgender prisoners, terminally ill prisoners, sex offenders and high-risk prisoners.

Management of vulnerable groups

International good practices in prison management are based on the idea that the means of punishment is taking away individual freedom, which is one of the highest values constitutions grant to the citizens. This measure is an end in itself and in modern imprisonment philosophies there is no place for additional punishment within prison because of crime or guilt.
Different regimes leading to different living conditions or less opportunity to take part in certain activities within one and the same prison will only take place according to security measures determined on grounds of certain risks in behaviour or personality of the prisoner. Usually these measures are decided by prison system following an individual risk assessment.

Having this in mind, one of the biggest challenges for good prison practices is how certain groups of vulnerable prisoners will be managed and dealt with. Good practices applied in working with these groups can truly make the prison system show its professionalism.

Vulnerable groups face an increased risk as a result of their imprisonment and their detention should be carried out with special caution and care in order to ensure protection of their human rights, which should also be taken into account in designing programs and living conditions for this group of prisoners.

III. COUNCIL OF EUROPE RECOMMENDATIONS AND CPT STANDARDS[28]

European Prison Rules[29] (hereinafter EPR) and CPT Standards are referred to in sections discussing specific groups.

IV. CURRENT CIRCUMSTANCES RELATED TO PROGRAMS FOR VULNERABLE GROUPS OF PRISONERS IN BIH

It may be said, based on relevant data, that prisons in Bosnia and Herzegovina (hereinafter BiH) have no programs specifically designed for these groups of prisoners. There have been individual attempts to introduce some forms of programs for drug misusers, but this has not led to a more systematic approach.

[28] Substantive sections of the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf/E (20101-Rev 2006)
[29] Recommendation R (2006)2

V. PRECONDITIONS TO DEVELOP AND INTRODUCE PROGRAMS

- **Legislative changes**

The necessary amendments of laws, which would provide adequate legal bases, are referred to in sections discussing specific groups and their treatment.

- **Structural changes**

If the programs are to be implemented, there should be a solid organizational structure and management at all levels of the prison system. These groups are usually within the domain of prison administration, and therefore it is **recommended** rethinking of options to establish prison administration in the western European sense.

On the other hand, until such authority is established, it is **recommended** exploration of options for hiring experts of appropriate profiles in Sectors for Execution of Criminal Sanctions within Ministries of Justice, and the establishment of departments for treatment of prisoners which will, among other duties, prepare and develop treatment programs and organize staff training. In this regard, it is also **recommended** exploring options for hiring professionals for staff training who will organize initial and further training for all groups of prison staff, including training for the introduction of treatment programs.

The introduction of treatment programs requires participation of all prison services and coordination of their work given their role within individual programs. This also requires provision of adequate staffing, financial and material resources, which includes purchase and customization of programs or development of own programs, provision of a required number of appropriate staff for practical implementation and their training, as well as appropriate facilities where the programs will be implemented and adaptation of these facilities for program implementation needs. Another important factor is research and program evaluation activities. It is also very important to establish cooperation with external institutions that may provide support.

- **Role of staff**

The role of staff in the implementation of a prison sentence as well as in the implementation of the program is very important. This includes all the staff working with prisoners. It is also believed that the selection, training, support to and retention of staff (in the sense that they do not change their jobs) are as important as a proper choice of assessment instruments, program modules and supervisory strategies. There is a synergic relationship among these. The staff may contribute significantly to the motivation of prisoners to participate in programs. This is why the attitude of the staff and their support to programs are important.

- **Supervision**

Prisons are institutions specific in their role and organization. Working with pre-trial detainees and prisoners, the prison staff is every day faced with factors that pose risks to their mental health, which is why they need sustained professional assistance and support through supervision.

It is a well know fact that working in prison is a highly stressful job, because the work takes place in an isolated environment in which the code of ethics and human treatment take on an extra dimension; in addition, the role of social control and the disproportionate distribution of power in a supporting relationship can significantly influence development of relations with prisoners.

Given the complexity of professional activities in prisons, the staff is expected to have an empathic approach and high ethical awareness. Important professional decisions are made on a daily basis and each employee's questioning of his own professional competence may have an impact on poor assessment of specific situations, decisions, and consequently their behaviour or actions toward prisoners. Inevitably, ethical dilemmas and questions occur: Have I made the right decision? Am I doing my job well?

Contemporary penological practice places increasing demands before prison staff every day in terms of professionalism in the performance of their complex and demanding tasks: it is vulnerable and at-risk groups of prisoners that come to serve their sentences and this necessitates knowledge of and compliance with domestic and international laws as well as possession of required knowledge, abilities and skills. In addition to sensitivity in working with this population and staff tolerance of diversity, what is above all required of the staff is a humane and fair treatment, which is imperative for a modern system of sentence implementation.

Working with vulnerable groups requires the staff to continually adjust their way of work, to have social skills and a high level of competence and other skills, and to show sensibility and individualized approach to working with every prisoner. Professional activities of the staff are often influenced by their previous personal experience, by differences in values, by prejudice, as well as by different personality traits. In their work, they may encounter difficulties in the form of rules and restrictions arising from legislation and institutional rules. It is therefore necessary to continually learn and re-examine one's own self, to reflect on problematic situations from professional life, on ethical dilemmas, prejudices, beliefs and convictions, as well as difficulties. Ignorance of gender-specific issues (issues of sex and gender) in everyday interaction between a staff member and a prisoner may create difficulties, causing both parties to have different experiences of the same issue and inhibiting progress in the implementation of the planned treatment of prisoners.

Everyday exposure to stress and emotional involvement in prisoners' problems often result in emotional exhaustion of employees, loss of motivation for work, frustration, physical and mental difficulties, as well as professional burnout that in turn reflects on performance of professional roles and tasks.

Supervision can help overcome these complex issues, as a method necessary in the professional development of prison staff, and it can allow for their better performance in their professional roles in the institutional context. Within the supervision area, prison staff can develop their competence, receive support, relief and understanding, gain insights into different perspectives and ways of solving problems in the execution of their demanding roles; they can understand their feelings, reflect on their experiences, dilemmas, difficulties in their work, without being judged or condemned by others; and they are also encouraged to reflect on all aspects of relations between the staff and prisoners. The great significance of supervision is also reflected in a professional's awareness of stress symptoms and prevention of professional burnout.

Given the nature of prison staff's job and their complex and responsible duties, there is an implicit requirement for prison management to provide all staff with professional assistance through supervision and other forms of professional dialogue. Recommendation No. R (97)12 of the Council of Europe is devoted to staff concerned with the implementation of sanctions and measures.

- **Recommendation 1**

Prison staff also needs to be allowed a continuous and compulsory participation in supervision by institutionalizing such supervision and incorporating it into the law on enforcement of criminal sanctions.

- **Program evaluation**

We should also briefly mention program evaluation, which is very important in assessing the usefulness and effectiveness of treatment programs, and in making any necessary adjustments, improving the performance and efficiency of programs. When discussing evaluation, the following questions should be asked: why, what, where, who and how; and these should guide the assessment of appropriateness and effectiveness of programs.

VI. PREPARATION FOR RELEASE

Transition from prison to freedom is always difficult and therefore preparation for release and cooperation of prison with external institutions are very important. In fact, preparation for release begins at the beginning of the prison term and constitutes an integral part of the treatment plan.

Preparation for release of vulnerable groups must be individualized and must take into account the specific needs of these groups of prisoners.

Preparation for release includes the following areas:

- education, work and employment;
- health, well-being, lifestyle and life skills, support and assistance (physical and mental health, family ties, community support and assistance);
- housing, finances and the victim (where to live, money management, relationship with the victim);
- advice to addicts, and;
- external benefits as part of preparation for release.

Many prison systems develop programs for preparation for release, which typically include:

- communication skills (ability to establish contacts with other people);
- writing a biography because this is required to apply for a job;
- ways to complete various forms (for personal documents, registration, etc.);
- how to apply for a job and where to go to ask for a job;
- how to find an apartment;
- health and safety at work; and
- how to lead a healthy lifestyle.

A great deal of attention and effort is devoted to the relationship between the perpetrator of crime and the victim, which is particularly important at the time of release from prison.

- **Recommendation 2**

It is recommended a more systematic approach to preparing prisoners for release from prison, with special attention being paid to preparing vulnerable groups for release from prison.

VII. SUMMARY

The admission process for vulnerable groups coming to serve their sentence must be well designed, including risk and needs assessment. This process is a dynamic one.

Female prisoners are usually a small group within a society's prison population and frequently regimes in such institutions are not designed with consideration of the specific issues of women's imprisonment, which requires an approach focused on the specific needs of women.

Drug misusers are frequently involved in sub-cultural activities connected to their attempts to gain access to drugs and have poor motivation for treatment, in spite of the fact that addiction is a disease that requires treatment. Therefore, intensive health care should be combined with the offer of therapy programs accompanied by drug-exit programs and by psycho-social and motivation measures.

Sex offenders normally do not make any problems in prisons with their behaviour. They keep themselves in a background, behave friendly, keep to the house rules and do not appear demanding. Taking a closer look, it can be seen that this criminality normally is based on a big variety of possible personality disturbances. On the other hand sex offenders within prisons, due to a low level of esteem within the hierarchy of prisoners, frequently face threats of violence from others. Therefore a protection policy against ill-treatment needs to be implemented in the system accompanied by motivation programs.

At first sight it may appear amazing that such a group of high-risk prisoners should be considered vulnerable, but the program design will make it clear why this is so. Taking a closer look at this group of prisoners, it turns out that there is a big variety of factors for becoming a high risk inmate. This is why they need an opportunity to take part in activities programs, a certain form of freedom within the prison system, as well as specially trained staff.

Finally, appropriate programs of preparation for release should be organized and networking with community institutions should be set up because eventually all prisoners will return to freedom and continue living among us in the community.

VIII. PROPOSED DOCUMENTS

Integral parts of this document are the following written material attached:

1. Admission procedure and sentence planning in prisons in Bosnia and Herzegovina

2. Treatment guidelines and programs for women prisoners in prisons in Bosnia and Herzegovina

3. Treatment guidelines and programs for drug misusers in prisons Bosnia and Herzegovina

4. Guidelines and treatment programmes for sex offenders in prisons in Bosnia and Herzegovina

5. Guidelines and treatment programmes for high risk prisoners serving sentences in prisons in Bosnia and Herzegovina

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III. IMPROVING THE SITUATION OF VULNERABLE AND HIGH-RISK PRISONERS

ADMISSION PROCEDURE AND SENTENCE PLANNING IN PRISONS IN BOSNIA AND HERZEGOVINA (1)

Sarajevo, April 2010

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"Admission procedure and sentence planning in prisons in Bosnia and Herzegovina" is the final document of the project.

CONTENTS

I. INTRODUCTION

Prisoners[30] are particularly vulnerable at the time of their arrival to the prison, which has a significant impact on prisoner's mental state regardless of his mindset and ability to adapt to these and similar circumstances. Admission to the prison is the first experience of the prisoner in this new environment, and this first contact with the prison is also very important with a view to reducing psychological tension, as well as introducing the prisoner to different admission procedures prescribed by law. At the same time, the staff must carry out their duties taking care of the well-being and fundamental dignity of the prisoner.

Appropriate approaches and coordinated forms of treatment and action are of particular importance if we consider that every person, regardless of his previous status and past prison experience, carries a number of dilemmas and ambiguities in this period. Those with experience will seek motives, contents and forms of identification that will serve as a defence mechanism against frustrations that they do not want to face once more, while others will seek encouraging forms of communication and protection from unpredictable stressful situations involving individuals, groups and the collective way of life. This is why the approach of the staff is extremely important, which should be dignified and humane.

The purpose of the admission procedure is:

- to enable the prisoner to get introduced to the prison system in an efficient manner;
- to ensure that prisoners are aware of
    - their rights and responsibilities
    - prison rules, daily routines and procedures
    - the need to adhere to rules and regulations;
- to facilitate efficient identification, assessment and management of prisoners who may pose a threat of self-injury or danger to others, or who may have some urgent needs;
- to assist a prisoner in making and accepting decisions that relate to him, and also to assist him in his behaviour during the prison term and in the behaviour in the community following release from prison;
- to promote and implement in practice the message that it is possible to change;
- to promote and implement in practice the development of responsibility;
- to develop a treatment plan (sentence plan).

II. ADMISSION PROCEDURE IN PRISONS IN EUROPEAN COUNTRIES

Prison systems in European countries devote a great deal of attention to the admission, classification, allocation and placement of prisoners and the sentence planning. The aim of the admission process is to facilitate a

[30] The term prisoners include both genders.

prisoner's integration into the prison environment, as well as to find indicators that will help the prisoner make use of the time spent in prison in the best possible way, and also to prepare him for law-abiding life after release.

In some states there are special establishments - diagnostic centres or centres for personality studies – whose purpose is to implement the admission procedure and to classify prisoners, based on available information and an assessment of prisoners' risks and needs, to be able to send them to prisons that will meet their needs in the best possible way. In other countries, these duties are performed by admission unit within prisons.

The admission process is systematic and clearly structured in terms of both the procedures and instruments used for assessment. This allows appropriate decisions to be made concerning security measures as well as programs the prisoner needs. It is equally important that such decisions are made based on reliable and valid instruments for assessing the risks and needs of prisoners.

The admission process typically includes: identification of the prisoner and examination of his needs; creation of a personal file; health assessment, including mental health; assessment of risks and any security measures required; and vulnerability assessment.

Based on the findings, a sentence plan is made that is reviewed and amended on a regular basis considering the progress in the treatment process.

Many prison systems have manuals and standards developed for use in the process of admitting a prisoner to serve his sentence.

III. COUNCIL OF EUROPE RECOMMENDATIONS

Many international documents deal with issues of admission, classification and placement/allocation of prisoners due to the high degree of awareness about the importance of the admission phase. European Prison Rules [31](hereinafter EPR) pay special attention to the admission of prisoners and discuss this phase under Rules 14, 15 and 16. An adequate admission procedure includes a humane and efficient process that takes place without any difficulties. Prisoners should feel that special attention is paid to the admission procedure, which is individualized in order to facilitate assessment of the prisoner and to allow his needs to be met.

In this respect, it is extremely important that the prison admits a person carrying valid documents and that it creates his personal file. The Rules provide a list of steps to be implemented as soon as possible after arrival in the prison, which include a medical check, risk assessment and security

[31] Recommendation REC (2006)2

classification, personal and social needs of the prisoner, and appropriate inclusion in adequate treatment programs while serving the sentence.

IV. CURRENT PRACTICES IN THE ADMISSION PROCESS IN PRISONS IN BOSNIA AND HERZEGOVINA

4. 1. Legal basis

The admission procedure for newly prisoners sent to prison under a referral act made by competent courts is defined under the Enforcement Laws of BiH[32], FBiH [33] (Articles 32-37) and RS[34] (Articles 72 - 74).

The newcomer is placed in a designated area called **the admission unit** where the prisoner may stay up to 15 days if he was sentenced up to one year or 30 days if the sentence was for more than one year. This period is used to carry out, among other activities, a health check and personality assessment, and to define a recommended treatment. In both entities, the prevailing system is that of collective implementation of sentence with an emphasis on individual treatment and the principle of individualization.

In addition, the prisoner is introduced to the house rules, the rights and duties in the course of serving his sentence, the way in which he will exercise his rights and disciplinary offences and punishments that may be imposed.

Both laws require a reclassification of the prisoner to be made depending on the results achieved in the implementation of treatment, and both laws also state that the treatment of prisoners is the responsibility of the treatment service (FBIH Article 125, RS Article 19), which also coordinates the activities.

None of the laws defines direct involvement of the prisoner in the development of treatment programs and giving consent in the form of a signature on the proposed treatment; however, in the overall process of resocialization, prisoner's active participation and cooperation are very important, which is also the most reliable instrument for measuring its success. Article 74/3 of the RS Law states that the official roster meeting shall be used to inform the prisoner of his collective, working place, the intensity of treatment work, the formal qualifying date for decision on benefits and any other information of relevance for prisoner's inclusion in the prisoner group.

4. 2. Admission procedure for new prisoners

The admission procedure is a multi-disciplinary process carried out by various experts. It is very important because it represents prisoner's first contact with the prison, and therefore the prisoner should be introduced to rules and

[32] Official Gazette of BIH No. 12/10
[33] Official Gazette of F BiH 44/98, 42/99 and 12/09
[34] Official Gazette of RS No. 12/10

regulations on the one hand, while any tensions and deprivation that may occur should be reduced on the other hand.

Having verified the validity of court documents and having performed a search, an inventory is made of the things the prisoner brought with him, following which the security service provides instructions and explanations and then a compulsory medical check is performed. The newcomer is placed in a designated area separate from other prisoners whose treatment has already been determined and defined. According to legal provisions in both entities, this separate area for admission of new prisoners is called the admission unit.

During this day, the prisoner also receives brief instructions and explanations from the security service regarding the house rules, and is allowed to have a telephone contact with his family.

During the admission phase, it is very important to identify and address any **urgent needs** of the prisoner that relate to:

- serious intoxication, psychological and/or other medical needs;
- the aspect of safety;
- family needs or any other needs.

The first detailed discussion to introduce the prisoner to the house rules and other legal provisions on the implementation of the prison sentence, as well as his rights and obligations and the ways to exercise such rights, is generally done by the head of the admission unit. Thereafter, a psychologist and social worker become involved in the entire process. There are essentially no significant differences in the method of work because these interviews are conducted by professionals working within the admission unit.

Following discussion about his duties, rights and any other regulations, and having been provided with an option to contact official institutions including the Ombudsmen, the CPT and other non-governmental organizations, the prisoner signs a statement to the effect that he is aware of the content of the above-mentioned documents. All regulations are also posted in visible places in the rooms where prisoners live, generally on bulletin boards.

The prisoner writes his biography, which forms an integral part of the written documentation and serves as a basis to draft a treatment recommendation.

The Council of Europe **"Prisoner Risk/Needs Assessment Sheet" is** generally used in FBiH and RS, but not in the way provided for in the Manual.

Members of an expert team examine documents as follows:

- the documentation of the prisoner is reviewed to learn about the prisoner, including his circumstances and any special needs;
- police reports and court opinions are reviewed;
- earlier documentation is consulted. If the person has already served a sentence, the documentation is only updated with specifics;

- questions that need to be dealt with during the initial interview are identified;
- any potential problems are identified that would prevent prisoner's participation in the interview (language, cultural differences, mental health, disability, illness, alcohol or drug addiction);
- the need to obtain additional documentation is recorded, as necessary.

Reports of the expert team are further supplemented during the implementation of the prison sentence to account for changes in the individual situation of the prisoner.

Based on available observation techniques, psychological tests and personality tests, a **psychologist** determines the mindset of the prisoner; whether there is a mental disorder or disability; what his character traits are; the level of general education; habits and preferences; motives and mental state at the time of the criminal act; prisoner's view of the sanction imposed; as well as any other data in this respect that may be helpful in further work with the prisoner. Based on these data, the psychologist produces a detailed written report for each person in the form of a psychological report or a history.

A social worker gathers personal data on the prisoner and members of his immediate family; the level of education of the prisoner and members of his family; employment; financial status and needs; information about childhood and schooling, housing and social and cultural environment; and on interests and preferences of the prisoner. Based on these data, the social worker produces a social history.

Health assessment is done by medical staff. The prison physician creates a medical file, performs a thorough medical examination to detect and record any health conditions or constraints, and makes an assessment of fitness for work. The results of all general and specialist medical check-ups are recorded in the medical file.

A responsible official in the admission unit carries out the following actions:
- combines all the history data and prepares a report for the staff meeting or, as defined in the RS law, for the official roster session;
- makes sure that prisoners are aware of their rights and duties;
- makes a recommendation for the treatment plan and assigns the prisoner to a correctional group;
- organizes the first staff meeting (conference)

This final action takes place at the final expert conference/official roster session held in a full session, which is attended by the prison director and his assistants for treatment and security, as well as by the expert team of the admission unit, by educators and by the employment officer. These are practices in all prisons in the RS.

In FBiH, the final staff meeting is not attended by the full expert team, but rather by the head of the admission unit, the director or a person authorized

by the director (this is usually the assistant director for treatment). It is also important that the expert team, while developing a treatment plan, takes into account the opinions, suggestions and wishes of the prisoner and tries to incorporate them fully in the proposed treatment plan, if possible. Both in the RS and FBiH, the final part of the staff meeting is attended by the prisoner.

Prison sentence up to one year
This procedure is also applied, in an abbreviated form, to prisoners sentenced to a prison sentence of up to one year.

In other prisons in BiH, where there are no admission units, the obligation to make a recommendation for treatment is assumed by professionals in charge of working with prisoners in these prisons (a psychologist, an educator). The rest of the procedure is identical.
A collective system for implementation of sentence is used in BiH, with an emphasis on individual treatment and the principle of individualization.

4. 3. Treatment plan

The penological treatment occupies a central place in the process of institutional re-socialization and professional management of prisoners. Individuality of each prisoner is consistently respected in deciding on an individual treatment for a prisoner; it is necessary to appreciate the person as a whole in order to recommend a treatment plan for that person that includes a number of activities, measures and required procedures for the prisoner.

The chosen treatment is recorded in prisoner's personal file.

- ***Treatment plan for prisoners sentenced up to one year***

Decision on a treatment plan for prisoners with shorter sentences (up to one year) differs from treatments for persons sentenced to more than one year. The treatment plan must define the following:

- internal classification group, collective and the educator;
- occupational activities of the prisoner;
- the form and intensity of treatment work;
- specific individual needs;
- free activities; and
- measures for post penal assistance and care.

- ***Treatment plan for prisoners sentenced to more than one year***

In deciding on a treatment plan for prisoners serving a sentence longer than one year, the procedure is more complex, lengthier and includes the following elements:

- internal classification group, prisoners' collective and the educator;
- psychological profile of the prisoner;
- work;

- education and vocational training;
- leisure time activities;
- the form and intensity of treatment work;
- the degree of risks and needs;
- special / specific needs; and
- measures for post penal assistance and care.

4.3.1. Internal classification group

Classification of prisoners into classification groups is done according to the Regulation or the Instruction for Classification and Reclassification of Prisoners in the Zenica Prison (FBIH) and the Foča Prison (RS), which were adopted by their respective directors. The new RS Enforcement Law stipulates that the Regulation for Classification and Reclassification of Prisoners shall be adopted by the Minister.

Both documents provide that a prisoners' collective should also be decided when deciding on an internal classification group; that such collective could include one or more similar classification groups; and that classification and reclassification should be done every three months. Assessment and benefits systems have also been developed. As to benefits available to the "C" group, neither document provides for external benefits, but they do differ with respect to benefits within the prison: in FBiH, the "C" group has certain internal benefits, while in the RS it has none.

There are three classification groups:

Classification Group "A"
This group will include prisoners with exemplary behaviour; those who fully accept their treatment and have achieved excellent or very good results in activities provided for in the treatment plan, and who can be assumed to have achieved significant results in re-socialization.

Classification Group "B"
This group will include prisoners whose behaviour is generally satisfactory; who accept their treatment and achieve satisfactory results; and who may be realistically expected to implement the treatment plan with some improvement.

Classification Group "C"
This group will include those who have not achieved positive results in the implementation of treatment plan and who show significant difficulties, as well as unsatisfactory and destructive behaviour.

In addition, an educator is assigned to continually monitor the prisoner and to update prisoner's personal file on a regular basis with information on changes in behaviour; attitude toward the crime and the prison sentence; prisoner's work activities as well as cultural, educational and sports activities and vocational training; in short, the file is updated with information about all the

changes that can serve to write reports for assignment to a lower security unit and for implementation of the institute of conditional release or pardon.

4.3.2. Psychological profile of the prisoner

This section includes assessment of prisoner's penal risk and identifies prisoner's personality structure, paying attention to certain elements of his personality, character and other traits, intellectual level, variations and deviations. It emphasizes personality traits that require correction and possible responses of the prisoner to different situations.

4.3.3. Work activities of the prisoner

In determining the type of work, the following elements must be taken into account:
- assessment of fitness for work;
- level of education;
- work experience in professional jobs or any other jobs;
- prisoner's interest in occupational activities;
- any medical or safety constraints;
- opportunities in the prison.

4.3.4. Education and vocational training

Education and vocational training are planned only for prisoners with long sentences.
Prisoners who are deemed to have sufficient time during the serving of their sentence should be allowed to complete a degree in general and vocational education or training, which will facilitate their integration in the social environment they came from. Having completed such education, the prisoner is issued a certificate which does not indicate that a school grade or school was completed in a prison.

Prisoners who have started education prior to coming to serve the sentence should be allowed to continue their education through taking extraordinary examinations, taking into account all other aspects of treatment.

4.3.5. Leisure time activities

The use of prisoner's free time and participation in cultural-educational and sports activities shall be planned and implemented through clubs.

4.3.6. The form and intensity of treatment work

When deciding on the form of work, a dominant form of work shall be decided (individual, group, collective) to be used in working with the prisoner. These forms of work almost always overlap in the course of treatment. The most common and/or the only form of work are individual work, which includes use of a series of methods: interview, observation, documentation review, stimulation, rewarding, prevention, persuasion, etc.

Collective work
Collective forms of work with prisoners take the form of collective meetings regarding organization of life and work in the collective; collective forms of work with prisoners on a specific topic; professional lectures given by medical staff and non-governmental organizations and associations coming from outside the prison (such as lectures on protection against and transmission of infectious diseases, such as Hepatitis C and HIV). This form of work also includes meetings with the room council.

Group work
This type of work is carried out by the expert team (a pedagogue, physiologist, neuro-psychiatrist and social worker) and is implemented two or three times per month, or more frequently if necessary. The groups are: repeating offenders, prisoners in the age group of 19-23 and drug addicts.

This work takes the form of lectures, discussions and dialogues in a group, as well as mini conferences in production units and within clubs for cultural, educational and sports activities. These sessions are generally of an educational nature, rarely taking the form of a group work with therapeutic features or group counselling.

Individual work
The content and methods of this work are defined by the educator in his operational work plan.

Moderate work is recommended if the prisoner has no pronounced negative traits, with positive traits being more dominant and without rooted incrimination in the prisoner.

Heightened work includes increased control and more frequent activities with the prisoner; negative traits are pronounced and are latent.

Intensive work is planned for those persons, whose negative traits are highly pronounced, including persistence in criminal offenses, a tendency to abuse alcohol, drugs, etc.

When defining certain activities in an individual treatment plan, the implementing parties will also be specified, as well as specific areas of action for different professionals (the correctional educator, psychologist, social worker, and neuro-psychiatrist).

4.3.7. Degree of risks and needs

This includes highlighting the type and degree of penal risk for the prisoner, as well as the need for possible placement to a unit for high-risk prisoners. In addition, a prognosis is made with respect to prisoner's behaviour during the serving of his sentence.

4.3.8. Specific individual needs

This relates to prisoners who have specific individual needs (social, family, personal, health: physical and psychological – self-mutilation tendency, violence, mental disorders, treatment of alcohol or drug addiction, and any other needs), which need to be addressed as a matter of urgency or on a continuous basis. For these prisoners, individual or educational work should be recorded and planned, as there are no special programs intended to address these issues.

4.3.9. Post penal assistance and care

From the very beginning of serving the sentence, attempts are made to establish cooperation with the family, centres for social work, other institutions and non-governmental organizations that can make a significant contribution to the implementation of the treatment plan. However, these activities are implemented on a smaller scale; they are not available for all prisoners; they are not of the same intensity and do not include all activities mentioned.

Cooperation with members of prisoners' families and different institutions is established:

- when problems are identified during prisoners' stay in the admission unit; this involves the social worker or other professionals;
- following transfer to a prisoners' collective on educator's recommendation;
- through a direct request of the prisoner, most often stating the following problems (issues):

    - establishing contacts and/or stabilization of relations with family members;
    - divorce; seeing children; making statements to admit paternity; various consents relating to children; problems with prisoner's children. For these issues, cooperation is most often established with competent centres for social work, SOS villages, homes for children without parental care;
    - issues related to qualifying for retirement benefits; arrangements to receive retirement payments in the prison and any other issues in this domain; this requires cooperation to be established not just with the family, but also with the relevant retirement insurance fund and commissions to arrange a date for prisoners to go there and to organize prisoners' going there,
    - for prisoners who are, for example, disabled war veterans and need to go to a disability re-assessment or to access certain rights, cooperation is established with municipal associations of disabled war veterans;
    - there are frequent contacts and cooperation with centres and certain services to provide financial assistance to family members;

- cooperation with family members to provide documents required to include the prisoner in the educational system in the prison;
- whether in writing or over the telephone, cooperation is established with municipal registrar's offices to obtain birth certificates and certificates of citizenship;
- in certain cases, cooperation is established with the hospital.

Cooperation is established with family members and centres for social work before the sentence expires if there is an issue of the prisoner's own family "not accepting" him or if there is a need to place the prisoner with other members of his family for a certain period. Unfortunately, the assistance provided by centres for social work most often amounts to providing a one-off financial assistance.

There are no specific examples regarding continuation of prisoner's education or referring the prisoner to addiction treatment.

4. 4. Monitoring of the treatment plan

Implementation of treatment plan

Based on a treatment plan, each educator should make an operational plan for the implementation of treatment for each prisoner, which should include the content and methods of work, as well as times and frequency of different activities. Still, this practice is now less frequently used. The educator records his activities with the prisoner in a prisoner personal file. The educator also produces a monthly work plan for the collective he is in charge of.

Change of treatment plan

Change of treatment is implemented using the same procedure used to decide on the treatment plan.

Following completion of 1 (one) year of sentence, the second conference is organized to evaluate the effectiveness of prisoner's treatment and to recommend changes to the treatment plan as necessary.

In addition to the educator, the conference is attended by a work instructor and a prison officer, who constitute a micro team. A written request for treatment change is submitted by the educator to the head of the admission unit, who then makes the change together with the expert team.
The educator will present the endorsed recommendations for changes to the treatment at a reclassification session (a meeting of all educators and heads of services), where a final green light is given to submit a written request to the head of the admission unit, who then makes changes to the treatment plan together with the expert team.

The procedure of making changes to the treatment plan is the same as the procedure of preparing and defining the treatment; it is done individually for

each prisoner on a recommendation of the educator and the expert team that took part in the development of the prior treatment. Changes to the treatment are verified by the director or a professional authorized by the director.

The educator will discuss changes of the treatment plan with the prisoner and will records details of this discussion on the prisoner's personal file, which is used to record all planned and unplanned discussions with the prisoner, as well as remarks about prisoner's behaviour and conduct.

V. RECOMMENDATION TO CHANGE THE ADMISSION PROCESS AND THE INDIVIDUAL TREATMENT PLAN

These recommendations serve to improve the method of work and also to coordinate the approach used in admission units. The admission procedure is the same for all prisoners and is standardized in this document. The length of the admission procedure varies depending on the length of sentence.

Specifics of this standardized procedure are listed in the following documents: treatment guidelines and programs for women in prisons in BiH; treatment guidelines and programs for high-risk groups of prisoners in prisons in BiH; treatment guidelines and programs for sex offenders in prisons in BiH; and treatment guidelines for drug misusers prisons in BiH, which were developed by the working group.

- **Recommendation 1**

Manual
The Sector for Execution of Criminal Sanctions should consider developing a manual for the admission procedure, or rather for staying of prisoners in the admission unit, in order to standardize procedures and make them more objective, with a timeframe that includes: objectives of the admission process and the admission unit; the assessment process as carried out by different professionals and the instruments used; medical assessment including mental health and instruments used to make such assessment; addiction assessment; risk assessment.

- **Recommendation 2**

Change of name
As the present system of implementation of prison sentences requires a different approach adjusted to significant societal changes, this also requires introduction of new standards in penological practices in BiH. Therefore, it is recommended to rename the admission unit into "Unit for Admission and Classification of Prisoners".

A psychologist, pedagogue, social worker, member of the security service, medical staff and, if necessary, a neuro-psychiatric specialist would form a well-functioning and trained expert team, who would also be spending a part of their time on other tasks considering the size of the prison.

In addition, the present classification system should be reconsidered and changed accordingly and adjusted to new methods of work.

- **Recommendation 3**

Amendments to laws
The amendments to the current Execution Laws are recommended by adding the following text in the chapter on "Admission of Prisoner":

"At the conclusion of the admission period, a written statement on treatment plan shall be made with the prisoner (an individual treatment plan), which shall be signed by the prisoner and a prison official".

- **Recommendation 4**

Amendments to secondary legislation
It is recommended that secondary legislation, as well as regulations and instructions passed by prison directors should be harmonized with laws, in terms of both their content and the terminology used. In addition, these documents should define/determine what constitutes a prisoner's right and what constitutes a prisoner's benefit.

- **Recommendation 5**

Continuous updating of initial findings
It is very important to note that the admission procedure is a dynamic process and that initial findings should be updated during the serving of a sentence. In addition, it is very important to assess the following:

- prisoner's motivation to resolve his issues related to committing criminal acts (involvement in a motivation group);
- any other barriers preventing the prisoner from accepting treatment decisions relating to him and preventing him from participating (psychiatric and organic disorders, drug or alcohol addiction, poor linguistic skills, disability)
- treatment priorities, i.e. which of the programs will be introduced first, depending on expert findings.

- **Recommendation 6**

Coordinate the work of professionals of similar profiles
Professionals in the admission unit need to consider the best way to prepare for working with a new prisoner, defining the purpose of their meeting and developing a plan, and also preparing the room and any required accessories. Therefore, the work of professionals of similar profiles in the admission unit should be coordinated in all prisons in BiH, which could be achieved in the form of a manual.

Psychologist
Psychologists should choose a battery of tests to be used during the observation process, as well as other types of tests as necessary. During observation, they would also use a list of predefined questions that would serve to produce the final psychological report.

Social worker
During observation of the prisoner, the social worker gathers data that can help determine etiological factors of delinquency related to prisoner's immediate and wider social environment.

Within the process of determining prisoner's social history, the following data are gathered:

- general data on the prisoner;
- family history (family structure, occupation, education, employment of family members, family relations - atmosphere, interpersonal relations (parent-parent relations, parent-children relations), housing and income status, criminal behaviour and social-pathological phenomena in the family);
- personal history of the prisoner (growing up: climate in the family, conditions in which the prisoner grew up), schooling, employment, leisure activities and interests, founding of own family, vice, use of alcohol or drugs, medical treatment,
- social adjustment of the prisoner, manifestations of his behaviour and criminal development.

In the end, the social worker recommends treatment measures for the prisoner from a social aspect.

- **Recommendation 7**

Participation of medical staff
The prison physician or a medical assistant should be on the admission team and must take part in staff meetings and conferences, and legal provisions should therefore be amended to reflect this.

- **Recommendation 8**

Prisoner risk/needs assessment sheet
which was jointly developed by international and national experts within one of the past CoE projects, should be an integral part of the admission procedure, using the sheet originally developed and attached as an integral part to this document. The form is to be used along with the manual that was also developed during the same CoE project.

- **Recommendation 9**

Staff meeting – expert conference – phase one
The following persons should be present at the conference: the educator, social worker, psychologist, physician or medical assistant and the head of the

admission unit, prison director or a person authorized by the director – in practice, this is the assistant director for re-education-treatment – assistant director for security, and also the employment officer and work instructors, as necessary. This meeting would serve to present reports and findings on the prisoner, as well as recommendations for treatment plan, which would all be subject to discussion.

Phase two
During phase two, the prisoner should also participate: he should be presented with the elements of treatment plan, which should be discussed and finally any updates or changes should be included.

- **Recommendation 10**

Organization of activities in the admission unit
Since the prisoners are more or less confined to the admission unit, it is recommended that some activities should be organized in the admission unit, such as sports activities, cultural and educational activities, group activities to learn about regulations and discuss them, etc.

- **Recommendation 11**

Updating of the individual treatment plan
The individual treatment plan should be a specific document and reflect the actual needs of the prisoner that will be addressed while serving the sentence. The plan is also subject to change due to changes in circumstances.

- **Recommendation 12**

Change of regime
Implementation of an individual treatment plan should serve as a basis for transfer or reassignment to either a higher security regime or a lower security regime of sentence serving (reclassification).

- **Recommendation 13**

Participation of the prisoner in developing an individual treatment plan
For the treatment to be successful, it is very important to ensure active participation of the prisoner, both in developing his treatment plan and in making changes to it. This means that the plan should be prepared together with the prisoner because this process will ensure his consent and appreciation of what is expected of him (explain the plan, discuss the plan, confirm whether the prisoner understands the plan).

In case the prisoner does not agree with the plan or some of its elements, or refuses to sign the plan, the staff should precede working on the next relevant task from the plan.

- **Recommendation 14**

Change of content of individual treatment plans
It is recommended to make changes to the content of the individual treatment plan such that the plan would eventually include the following:

1. classification group and prisoners' collective;
2. the educator;
3. work and employment;
4. general and professional education;
5. free activities;
6. medical treatment;
7. psychological profile;
8. degree of risks and needs;
9. inclusion in treatment programs;
10. family ties and ties with the outside world;
11. post penal treatment (employment, accommodation, health care, finances, relationship with the victim).

- **Recommendation 15**

Planning of the timeframe of an individual treatment plan
While making a timeframe for the implementation of a treatment program, priorities should be set and the length of the program and the sentence should be taken into account.

- **Recommendation 16**

Signing the individual treatment plan
In the end, the prisoner and the responsible prison official should sign the individual treatment plan because this attaches significance to both the document and the tasks that both parties must adhere to.

- **Recommendation 17**

Informing other staff about the individual treatment plan
The staff in the unit where the prisoner arrives should be familiar with the main guidelines of the individual treatment plan, and so should be other staff (security service; work instructors, medical staff); this is a responsibility of the prisoner's educator.

- **Recommendation 18**

Availability of a certain profile of professionals and appropriate programs
To make sure the treatment plan is implemented effectively; appropriate programs and professionals of an appropriate profile should be available.

- **Recommendation 19**

Electronic data storage
A computerized prisoner database should be introduced, which would facilitate the work of the treatment service and other services.

- **Recommendation 20**

Staff training
The staff should be trained to implement activities in the admission process, which should be ensured through regular staff training. In addition, new developments in this area should be tracked and networking activities implemented with relevant institutions in the community.

VI. SUMMARY

Most of the prisoners return to their social community having served their sentence. This is why it is very important to provide activities and programs within the prison system to allow the prisoners to learn to cope with everyday difficulties.

For this reason, the individual treatment plan identifies programs and activities that will facilitate prisoner's rehabilitation and a change of his lifestyle for his own benefit.

In fact, preparation for release begins immediately following admission to the prison, and the sentence plan is a type of a "journey" through the prison system that includes the following: assessment, planning, implementation of the plan, checking of the plan and evaluation, with the prison staff providing guidance and support in the process.

Council of Europe
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Joint Project between
the European Union and the Council of Europe

"Efficient Prison Management in Bosnia and Herzegovina"

III. IMPROVING THE SITUATION OF VULNERABLE AND HIGH-RISK PRISONERS

APPENDIX 1

PRISONER RISK/NEEDS ASSESSMENT SHEET

Canadian International Development Agency
Agence canadienne de développement international

Canada

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Prisoner Risk/Needs Assessment Sheet

Personal Identification :		
PIN:	Last name:	First name:
Assessor:		
Assessment date (dd/mm/yy):		

Section 1 : Criminal History Risk *(Check off accordingly)*			
	Yes	**No**	**Unknown**
Juvenile record?	○	○	○
Previous adult prisonerion (s)? # ___	○	○	○
Violent criminal offence (s)? # ___	○	○	○
Earlier prison term (s)? # ___	○	○	○
Last liberty less than one year?	○	○	○
Escape/unlawful stay at liberty? # ___	○	○	○
Confinement for disciplinary reasons? # ___	○	○	○
Criminal group association?	○	○	○
Total			
Risk Level (general)			
Category	Low	Moderate	High
	○	○	○

Observations/Comments:

Section 2 : Criminogenic Needs *(Check off accordingly)*				
	Yes	**No**	**Unknown**	**Asset?**
Education:				
Less than primary school?	○	○	○	
Less than secondary school?	○	○	○	
Employment:				
Unemployed when committed crime?	○	○	○	
Lacks work skills?	○	○	○	
Family Background:				
Family attachment limited?	○	○	○	
Family members criminally active?	○	○	○	
Social Contacts:				
Affiliated with crime groups?	○	○	○	
Have criminal friends?	○	○	○	
Substance Abuse:				
Abuses alcohol?	○	○	○	
Uses drugs?	○	○	○	
Community Living:				
Has no fixed accommodation or changes residence frequently?	○	○	○	
Irregular income?	○	○	○	
Cognitive/Behavioural:				
Limited problem solving skills?	○	○	○	
Has difficulty with self-control?	○	○	○	
Criminal Attitude:				
Negative attitude towards legal norms?	○	○	○	
Denies crime or minimizes?	○	○	○	
Value Orientation:				
Disrespect for persons or property?	○	○	○	
Supports use of violence?	○	○	○	
Total				
Needs Level (general)				
Category	**Low**	**Moderate**	**High**	
	○	○	○	

Section 3: Special Needs and Summary

Special Needs:

Physical:	Mental Health:	Security:	Suicidal:	Self-injurious:	Other:
○	○	○	○	○	○

Priority Needs:

1. _____

2. _____

3. _____

Overall Risk-Needs:

	Low	Medium	High
Low	○	○	○
Medium	○	○	○
High	○	○	○

Motivation:

Low	Medium	High
○	○	○

Observations/Comments:

Council of Europe
Conseil de l'Europe

European Union
Union européenne

Joint Project between
the European Union and the Council of Europe

"Efficient Prison Management in Bosnia and Herzegovina"

III. IMPROVING THE SITUATION OF VULNERABLE AND HIGH-RISK PRISONERS

TREATMENT GUIDELINES AND PROGRAMS FOR WOMEN PRISONERS IN PRISONS IN BOSNIA AND HERZEGOVINA
(2)

Sarajevo, April 2010

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"Treatment guidelines and programs for women in prisons in Bosnia and Herzegovina" is the final document of the project.

CONTENTS

I. INTRODUCTION

Women are a particularly vulnerable group and the approach in prison management is to take into account gender sensitive approach and taking into consideration their special needs.

There are many reasons that make women a vulnerable group, and they also determine their specific needs. Women are frequently:

- victims of family violence and of sexual abuse and rape, which makes them subject to specific mental difficulties;
- involved in prostitution;
- drug or alcohol addicts; and
- persons who bear responsibilities and provide care to the family and children.

II. TREATMENT OF WOMEN IN PRISONS IN EUROPEAN COUNTRIES

In recent years, women prisoners as a vulnerable group have attracted a great deal of interest among both practitioners and policy makers as well as researchers and other agencies and institutions. They are interested in treatment and specifically designed programs, as well as in a gender-sensitive approach to prison management, taking into account specific features of women and their needs in prisons.

It is a known fact that the number of women in prisons in Europe and across the globe has been rising in recent years; in spite of this, however, they are still a minority among the prison population. Researches had shown that the number of women in prison population ranges between 3 and 10 %. Due to their low number, there are fewer prisons for women and consequently women may be placed in prisons far away from their homes. This can severely limit options for visits to maintain family ties, in particular for women who used to be heads of family before serving their sentence. In addition, the low number of women in prisons is the cause of unintended discrimination with respect to opportunities for work and employment, professional education and schooling.

There are three types of prison establishments in which women serve their sentences:

- Prisons for women
- Prisons shared by women and men
- Prisons for men with women units.

Prisons are known to be designed for men as the prison population, which results in prison regimes and prison treatment and education programs not being suitable for the specific needs of women.

The role of staff in working with women prisoners is very important. This requires a sufficient number of women on staff, and the staff must be provided with appropriate training, including in gender-related issues.

All of this requires an integrated approach that has a greater focus on women, which includes different services and policies for men and women. Many countries have already amended their management strategies for women prisoners and are developing special programs for them.

Special attention is paid to the use of community sanctions and measures.

III. COUNCIL OF EUROPE RECOMMENDATIONS AND CPT STANDARDS

European Prison Rules[35] (hereinafter EPR) include a special chapter on women (Rule No. 34), and on infants (Rule No. 36).

In addition, in its reports the CPT[36] pays special attention to women inmates and we can summarize their recommendations as follows:

1. Mixed gender staffing should be encouraged because it can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention. This also helps in preventing abuse and allows for appropriate staff deployment when carrying out gender sensitive tasks, such as searches.
2. The duty of the state to protect persons deprived of their liberty from abuse will be easier to accomplish if women deprived of their liberty are placed in a separate accommodation from men deprived of their liberty within the same institution (although CPT welcomes arrangements in which couples deprived of their liberty may be accommodated together, or provisions are in place allowing for some degree of mixed gender association in prisons, provided that prisoners involved agree to participate, and are carefully selected and adequately supervised).
3. Women deprived of their liberty should enjoy access to meaningful activities on an equal footing with their male counterparts. Instead of being offered activities which are deemed “appropriate” for them, such as sewing or handicrafts, they should be offered training of a truly vocational nature.
4. The specific health and hygiene needs of women must be addressed in an adequate manner. There must be ready access to sanitary and washing facilities, and any required hygiene items must be provided

[35] Recommendation REC (2006)2
[36] Substantive sections of the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf/E (2020)1 – Rev. 2006

(including their safe disposal). Equivalence of health care includes access to medical practitioners and nurses who have specific training in women's health issues. This approach requires availability of preventive health care measures of particular relevance to women (screening for breast and cervical cancer) and access to medications (such as the contraceptive pill, which is often prescribed to alleviate painful menstruation) as are available in the outside community.

5. Respecting women's right to physical integrity.

Specific issues concerning women deprived of their liberty that are pregnant or mothers with young children: "it is a generally accepted (and observed) principle that babies should not be born in prison". In the view of the CPT, the governing principle in all cases must be the welfare of the child. This implies in particular that any ante and post natal care provided in custody must be equivalent to that available in the outside community.

IV. CURRENT CIRCUMSTANCES UNDER WHICH WOMEN SERVE PRISON SENTENCES IN BOSNIA AND HERZEGOVINA

4.1. Legal basis

The Bosnia and Herzegovina Law on Enforcement of Criminal Sanctions, Detention and Other Measures – Consolidated Text[37] (hereinafter: "the BiH Enforcement Law"), the Law on Enforcement of Criminal Sanctions in the Federation of Bosnia and Herzegovina[38] (hereinafter: "the FBiH Enforcement Law") and the new Law on Enforcement of Criminal Sanctions of Republika Srpska (hereinafter: "the RS Enforcement Law"),[39] define implementation of criminal sanctions; however, neither of these laws includes special chapters or parts discussing implementation of sanctions imposed on persons of female gender.

It is evident that general legal provisions that apply to persons of male gender also largely apply to women. Certain articles in these laws treat women as a separate group only with respect to certain issues (e.g., all three laws provide an option for the postponement of enforcement of a prison sentence for pregnant women and mothers with babies of a certain age); legal provisions on placement within Article 19/2 of BiH Enforcement Law provide for a maternity unit and mothers and baby unit, while Article 63/1 of RS Enforcement Law stipulates that childbearing women and mothers nursing babies should be placed separate from other women; furthermore, Article 87 of RS Enforcement Law and Article 48 of FBiH Enforcement Law, discussing health care, define certain issues with respect to keeping a child while serving sentence. RS Enforcement Law provides that a child up to one year of age may be kept, following which the child is given to the family or a social welfare system in an agreement with the mother, while FBiH Enforcement Law

[37] Official Gazette of BiH No. 12/10
[38] Official Gazette of FBiH, No. 44/98, 42/99 and 12/09.
[39] Official Gazette of RS No. 12/10

provides that the child may remain with the mother, at her request, until it reaches three years of age. Article 64/1 of RS Enforcement Law defines certain women's issues by "paying special attention to women's needs, in terms of their physical, vocational, social and psychological needs when making decisions that concern any aspect of their stay in the prison."

- **Recommendation 1**

Amendments to laws in accordance with EPR
It is recommended to amend the laws in accordance with EPR Rule 36 that discusses infants in prison and their accommodation.

4.2. Establishments in which women serve sentences

There are no specialized prisons for women in BiH, and they therefore serve prison sentences, regardless of the criminal act, the length of sentence, age, etc., in special units within prisons for men.

Women's units are physically separate from areas where men deprived of their liberty are staying. These units are supervised by women prison officers only, and the treatment work is implemented by the treatment service. There are two prisons today in BiH in which women are kept: the Istočno Sarajevo prison in the RS, and the Tuzla prison in FBiH.

Most of the women in Istočno Sarajevo and Tuzla prisons have a rather large degree of freedom in terms of work and movement, considering they generally work at places such as restaurants, kitchens, laundries, warehouses, etc., and they meet their workshop instructors without prison officers present. While working, they are occasionally visited by their educators (treatment staff). In the Istočno Sarajevo, a lot of work places are located outside the prison perimeter (Kula restaurant, warehouse area) and women work there without surveillance. However, upon returning from work, women come to the living quarters where they are under surveillance by women prison officers.

With respect to their stay in the unit itself, there are divided in educational groups (collectives). All women, regardless of danger and risk, stay together, except in situations when there are special reasons not to place them in the same dormitories or not to assign them to the same workplaces, which are decided by the treatment service.

It would appear that women, who work in different workplaces without surveillance, especially those working outside the prison perimeter, enjoy a regime that resembles open regime until their working hours are over. At the end of their working hours they come to their living quarters supervised by prison officers, which is reminiscent of semi-open regime because other activities, such as sports activities, daily meals, etc. are carried out under surveillance.

For example, according to RS Enforcement Law, organization of life and work of prisoners in open regime is based on their own self-discipline and their

personal responsibility encouraged and controlled by the educator; on the other hand, semi-open regime include material security, and prison officers ensure order and control of prisoners' movement.

Those women who are deemed to pose a problem or danger are assigned to workplaces within the prison perimeter and are supervised by women prison officers. Their activities (sports, religious, occupational, time in the open air, etc.) are also done under surveillance. This group is subject to more intensive treatment work.

There are very few studies dealing with the women prison population in BiH.

4.3. Some features of female vs. male prison population

The number of women serving sentence is significantly lower than the number of men. Women commit less criminal acts than men; a certain number of women prisoners are dependent on psychoactive substances; women are most often away from their homes and families because of the small number of women's prisons in BiH; female prison population is more prone to mental and physiological disorders in prison (asthma, epilepsy, high blood pressure, anxiety, depression) due to high levels of stress; women are largely first time offenders and there are rare repeating offenders among them; female population has some special needs in terms of health care.

Women are particularly prone to personality and behaviour changes due to dissatisfaction with one's own self, indecision, depression, hopelessness, loss of the will to live and changes in own self-image. This is further complicated by their specific emotional status (e.g. due to maternity, pronounced stigmatization), and by social and health factors. It is highly likely they will have problems providing care to their children, families and others. Additional issues are stigmatization following release from prison (treating someone such that the person feels very bad or unimportant), victimization or being abandoned by their families.

4.4. Sentence serving

4.4.1. Admission

The admission procedure is provided for under law and is the same as the one used for male prisoners.

4.4.2. Accommodation

Since women constitute a small part of the prison population, their accommodation is not a matter of sufficient attention. Specifically, rooms used for their accommodation are designed architecturally in the same way as rooms intended for men, which does not meet the needs and specific requirements of this population. In addition, the low number of locations with prisons for women in BiH results in physical distance from their family members and the wider social environment they belong to.

The issue of accommodation is governed both by laws and by-laws. Article 19/2 of BiH Enforcement Law, relating to the medical service, defines that "The unit for persons of female gender shall include a maternity unit and rooms suitable for children...", while Article 63/1 defines that "childbearing women and mothers nursing children shall be placed separate from other women". Apart from general norms according to which women are accommodated separate from men and juveniles are separate from adult prisoners, there are no other similar norms in the current laws.

These laws provide ample opportunities for postponement of execution of their sentences until their child reaches one or three years of age, which reduces the possibility of having mothers and children staying in prisons. There are also other instruments with a similar effect such as interruption of sentence, pardon or conditional release. BiH Enforcement Law (Article 144 in conjunction with Article 118) and FBiH Enforcement Law (Article 57 in conjunction with Article 27) define interruption of sentence under the same conditions as postponement with respect to women, allowing an interruption "if the person deprived of liberty is a breastfeeding women with a child under one year of age or a pregnant women". The interruption of sentence with respect to women is defined under Article 110/(d) of the RS Law, which stipulates that such interruption may be granted "if the prison does not have suitable rooms to accommodate women during pregnancy, delivery and maternity periods – not longer than until the child reaches one year of age". Under all three laws, such interruption may last only until the child reaches one year of age.

Cases of children staying together with women serving sentence are very rare because there are no special units for mothers and babies.

4.4.3. Health care

There are health care rules in place for all prisoners and they apply equally to women. What is specific is that women have additional needs for certain medical check-ups (a gynaecologist), as well as health care for children that may be staying together with their mothers while they serve their sentence (a pediatrician).

With respect to health care, RS Enforcement Law (Article 87) and FBiH Enforcement Law (Article 48) include additional provisions for certain aspects of keeping a child by a mother serving a prison sentence. Options available to mothers in this respect are not identical.

In their practical work, medical services face an increased need of women for medical treatment with respect to mental health.

As regards medical treatment practices for prisoners addicted to psycho-active substances, prisons generally have two ways available to address this issue. Women who come to serve their sentence during an abstinence crisis are usually sent to clinical centres or hospitals to be treated by physicians

specialized in these issues. Those who do not experience a crisis are treated with a symptomatic therapy, in cases involving mild somatic symptoms.

4.4.4. Nutrition

Prisoners must have three meals per day according to a prescribed prisoner nourishment table. When deciding on the menu, consideration should be given to religious, dietary and cultural requirements of prisoners. Article 67/3 of RS Enforcement Law provides that pregnant and childbearing women should be given food of the type and in quantities determined by a physician or another professional. The FBiH Enforcement Law does not define this issue.

4.4.5. Education, vocational training and schooling

Laws in BiH provide options for schooling and vocational training of those prisoners that will find it “useful or necessary”. Within the treatment program, treatment service should give their own opinion regarding this usefulness and necessity for each individual.
However, it is a fact that today only a very small number of women in BiH attend school of any educational level. There are some cases in the Tuzla prison at the moment, while in the Istočno Sarajevo prison there are no women currently attending any school or vocational training.

4.4.6. Treatment

Depending on prisoner’s personality, type of criminal act, length of sentence, etc., treatment procedures are decided, including:

- occupational activities (work);
- treatment work;
- education; and
- cultural and sports activities.

4.4.6.1. Work

Employment choices for women serving sentence are rather limited, and women often work in the laundry, kitchen, restaurant and in the cleaning service. On the other hand, it must be noted that such work will not be of much use to find a job after they serve their sentence.

Prison management faces the issue of finding other types of jobs that would help women train for jobs that are in demand in the labour market. Thus, prison work helps women adapt to the life and work in prison, and to make use of their time and develop working habits, rather then offering them chances to obtain qualifications they would find useful after they serve their sentence**.**

4.4.6.2. Treatment work

The entire life and work of women in prisons is organized such that all services, either directly or indirectly, accomplish their goals and targets concerning women's re -education, re-socialization and training. The main implementing party for these activities is the treatment service.

Treatment work takes *three basic forms of work:* ***individual, group and collective.*** In practice, there are no special programs for women.

4.4.6.3. Leisure activities

Free time is a period in an individual's daily schedule that allows him/her to pursue activities that provide rest, relaxation and pleasure. This is a period of active relaxation, positive development and creative reinforcement of one's personality.

The current practice generally allows women to pursue some sports activities (mostly volleyball during warm seasons), as well as bibliotherapy/reading therapy, watching TV shows and opportunities for meeting one's religious needs.

In spite of efforts to design programs to occupy prisoners' free time, there are some issues present in the organization of clubs and in the organization of cultural activities. Since the number of women is low, it is difficult to gather a group with the same or similar interests and abilities, and to organize a club that can be active continually. In addition, it is not infrequent that women come to serve sentences lasting a few months only, so even if a club is formed, it will close down once these women leave.

4.4.6.4 Preparation for release

Release from prison is based on prescribed legal norms that are rather balanced in laws at BiH level, and they essentially require rules to be set about the time and method of release, return of issued items and return of personal possessions. In addition, all laws include norms regarding release assistance in the form of payment of travel costs, procurement of clothing and footwear if the inmate needs them, addressing of any health conditions at the time of release, etc. During preparation for release, Centres for Social Work are notified to take measures within their mandate and, as necessary, to ensure basic conditions to receive the released person in his/her place of residence. There are no special programs of preparation for release.

4.4.7. Contact with the outside world

Both women and men prisoners enjoy the same legal opportunities for having contact with the outside world. In terms of visits, women may be visited by members of their family, as well as any other persons provided for under laws and House Rules. In accordance with international law and treaties, diplomatic and consular representatives may visit foreign nationals. BiH Enforcement

Law provides for visits to stateless persons and refugees by international organizations that protect interests of stateless persons.

Regulations currently in force govern private (conjugal) visits that are an entitlement of women to meet their husbands. Rooms for private visits are available in the Istočno Sarajevo and Tuzla prisons. Practice has shown that women use this option less than the male prison population.
Child visits take place in rooms that are not designated for this type of visits, which requires use of some improvised rooms. Difficulties generally result from a lack of available free space to organize these visits.

Women are informed on a daily basis about developments in the outside world through newspapers, radio and TV sets, etc.
The section of the document on leisure activities recommends that visits to various places and events in the city should be organized.

V. PROPOSED TREATMENT PROGRAM FOR WOMEN PRISONERS IN BiH

In addition to the treatment provided for under the legislation, this document provides certain recommendations aimed at improving, standardizing and structuring the work, conditions of implementation as well as the status of women deprived of their liberty as a sensitive and vulnerable group in a prison population.

EPR place particular emphasis on the need to offer to all prisoners a balanced program of activities that will meet their basic needs to ensure human dignity (Rule 25).

5.1. Admission to prison and treatment plan

The admission procedure as defined under the law shall take place in accordance with the document titled “Admission Procedure and Sentence Planning” that was developed during the project. The individual treatment plan must reflect specific needs of women as well as a gender-sensitive approach.

At admission, priority should be given to gathering data about gender-related needs. This means that the number of children and their personal particulars should be carefully recorded, which is important when planning contacts between the mother and her children and when planning improvements to women’s parental role, taking the best interest of the child into consideration at all times.

5.2. Health care

Women serving a prison sentence must have access to health care services, both those provided by general practitioners and by specialists, placing particular emphasis on ensuring access to a gynaecologist and regular gynaecological check-ups.

In addition, prison need to maintain cooperation with local health institutions to be able to refer women for specialist examinations, surgeries, inpatient treatment, etc.

5.2.1. Prevention of conception, contraceptives and education

- ***Educational program on the use of contraceptives***

The aim of this program is to prevent conception and ensure practicing of safe sex.

- ***Educational programs about infectious and sexually transmitted diseases***

These programs would aim at breaking prejudice on these diseases, and at prevention and protection of health.

These programs could be implemented by trained prison medical staff, either in groups or individually depending on the number of prisoners, and also in accordance with the general strategy of the prison.

5.2.2. HIV, Hepatitis and prevention

- ***Educational program for HIV, Hepatitis***

It is very important to provide educational programs to women with respect to HIV. This program should include methods of transmission (most often by sex, via blood or mother-to-child transmission) and the prevention of this disease.

Education is also required for Hepatitis viruses A, B and C to cover transmission routes, symptoms, treatment and prevention.

To prevent spreading of diseases, women should be informed about modes of transmission; lectures should be organized; informational material should be distributed and women should be sent for voluntary testing. While prison regulations do not provide for confidentiality in dealing with information about this type of disease, we recommend that this type of information should not be either in possession of or disclosed by officials among the prison staff or to the other prisoners, due to the doctrine of this disease.

These programs could be implemented by trained prison medical staff, either in groups or individually depending on the number of women.

- **Recommendation 2**

Consider developing a strategy for prevention of HIV and Hepatitis
Sectors for Execution of Criminal Sanctions at Ministry of Justice level should consider the developing a strategy for prevention of HIV and Hepatitis within

the strategy for treatment of drug addicts, which should emphasize special needs of women.

5.2.3. Risk of suicide and suicide prevention

A violent taking of one's own life is something that also happens among prison population. Modus of committing a suicide, places where suicide is most commonly committed and the timing of suicide (the most common times of day or night) need to be processed statistically.
Women should be identified as potential risk of suicides through certain aspects of their tendency to suicide, i.e. their history, and through the monitoring of their behaviour and detection of risk groups.

It is very important to gather any information relating to suicidal behaviour in the family, as well as to any previous suicidal attempts by the women due to loss of a close person, mental disorder, stress, incurable disease, etc.

Identification of risk groups is also important, such as identification of women who arrived recently and will serve long sentences and lose connections with the outside world; of middle-aged or older unmarried women who face reduction in the number of social ties, reduced support in their environment, unfulfilled expectations combined with physiological and hormonal changes typical for this age.

Any changes in behaviour observed (separation from friends, collecting medications, giving out possessions, farewells, etc.), as well as depressive symptoms (sleeping troubles, loss of appetite, withdrawal, sense of helplessness, a strong feeling of guilt, etc.), suicidal thoughts or making preparations are all a very serious alarm calling for our response. These are indeed relevant information, but this does not mean that every suicide exhibits a typical behaviour pattern.

In response, all such observations should be communicated to professionals, who should make a professional assessment and recommend surveillance and monitoring of the female prisoner or some other type of intervention. Surveillance and monitoring needs to be assessed and planned by the security service.

- **Recommendation 3**

Develop a suicide prevention program for women
In light of the foregoing, it appears necessary to develop a Suicide Prevention Program for women prisoners that will build on the Prevention Strategy. This means that Sectors for Execution of Criminal Sanctions at Ministry of Justice level should, in cooperation with external experts, consider developing a - ***"Prison Suicide Prevention Strategy***" which would include:

1. A training program for prison staff to be able to recognize symptoms in persons at risk of suicide;

2. Development and use of questionnaires on suicide risk among prisoners;
3. Interventions – how to respond when we know that someone is at risk of suicide;
4. Interventions – how to respond when someone has attempted suicide;
5. Interventions – how to respond when someone has committed suicide;
6. Analysis of events; and
7. Assistance to prison staff.

This strategy would be implemented in prisons as a "Suicide Prevention Program" and the implementing parties would be prison psychologists in cooperation with external experts. The questionnaire could be completed by heads of security service shifts, who would be trained accordingly.

5.2.4. Personal hygiene and clean rooms

- ***Educational program on personal and collective hygiene and hygiene for prevention of disease***

The issue of hygiene needs to be discussed as an important item that concerns prevention of many diseases. Women need to be instructed in proper personal hygiene and in keeping rooms clean.

The program would be implemented by trained medical staff and the security service in cooperation with the treatment service.

5.2.5. Mental health

Women often have additional and special needs not just in terms of maternal care and gynaecological health, but also particularly in terms of mental health, because a large percentage of women had been victims of various form of abuse in the past. Women often complain about various forms of neurosis. It would be desirable if the neuro-psychiatrist could, in addition to routine check-ups and prescription of therapy, work with other professionals and organize a group psychotherapy and form therapeutic communities based on difficulties exhibited, in particular for alcohol and drug addicts who are being increasingly admitted to prisons.

- **Recommendation 4**

Mental health improvement program should cover various detention regimes

This comprehensive program aimed at improving mental health in prisons should include different and balanced prison regimes, including an approach to educational activities, vocational training, recreation, family contacts, physical activities, balanced diet, and opportunities to take part in artistic activities, among others. Counselling and therapeutic services should be offered to all those who carry a risk of developing a mental disorder as soon as practicable.

- ***Mental health improvement program for women***

Due to a great need for mental health care among women, the main component of their rehabilitation program should include provision of an adequate, gender-balanced and interdisciplinary mental health care. It is necessary to recognize specific features of women's mental heath and the psychological support they need, which includes, among other things, women showing acute stress and depression due to isolation and separation from children, families and the community.

Treatment programs should be individualized and focused on causes of stress and depression, as well as on psychiatric issues, and should be based on an integrated approach that includes counselling, psychological support and medications, if necessary. Medications should be used only when necessary to address individual needs, and not as a routine procedure, as is the case in many prison systems.

The need for mental health care for perpetrators that is related to their mental handicap, such as in cases of women who killed their newborns due to postnatal depression, should be included in the offered treatment program.
The program would be implemented by the treatment service staff.

5.2.6. Gynaecological health

Medical practice holds that a healthy woman should be subjected to a regular gynaecological examination, and a woman with gynaecological problems once per month; therefore, this practice can be recommended for use in prisons.

Considering that women's health in the modern age is largely affected by specific diseases such as breast and cervical cancer, preventive check-ups should be organized and women should be provided with adequate education about these diseases and a supply of any required medications.
This segment would be implemented by the medical service.

5.2.7. Anorexia and Bulimia

Anorexia is a severe loss of appetite and struggle against hunger for reasons of an emotional nature, at the centre of which is an unreasonable fear of gaining weight that does not diminish even when emaciation has reached such proportions as to threaten the life of the patient. An anorexic person has frequent bouts of depression and even suicidal desires. A great percentage of deaths among anorexic persons is due to commitment of suicide. An anorexic often withdraws from the company of others, distancing him/herself from friends and family, refusing their help and the help of a physician because he/she believes everything is all right.

- **Recommendation 5**

Treating Anorexia in a comprehensive way
The treatment requires involvement of a team of physicians, while therapy should include diet control, use of medicines such as antidepressants and neuroleptics and use of psychotherapy with the participation of family members.

Similar to Anorexia, **Bulimia** is a feeding disorder that is psychological in origin. While anorexics starve themselves, bulimics engage in overeating and then "empty" themselves by self-induced vomiting. Signs which may indicate Bulimia include: - increased fear of gaining weight, - consumption of food in excessive quantities, - thoughts preoccupied with food, consuming or not consuming food, - lack of control when near food, - secret consumption of food.

- **Recommendation 6**

Treating Bulimia in a comprehensive way
The treatment for this disease is similar to that for Anorexia. It involves psychotherapy combined with antidepressants. Food counselling should be organized. Psychological treatment for Bulimia may include family, group and individual psychotherapy that focuses on emotional experiences and relations that constitute the actual cause of Bulimia.

5.3. Safety and security

Women are secured in the same way as male prisoners, the only difference being female prison officers. Under the law, searches may only be performed by female prison officers.

It is now generally acknowledged that safety and security in a prison depends on the creating positive climate in the prison that encourages cooperation of prisoners. Positive relations should also be developed between the staff and prisoners (dynamic security).

The stress on dynamic security is particularly important in women's prisons because high security measures are known to adversely affect women. Due to their low numbers, women are frequently placed in a higher security facility than is actually necessary.

Under RS and FBiH Enforcement Law, semi-opened prisons may include open departments. This means that under current legal provisions, the Tuzla and Istočno Sarajevo prisons, which have the status of semi-opened prisons, may have open departments.

- **Recommendation 7**

Consider establishing prisons for women
It is recommended upgrading of certain legal mechanisms to truly reflect an open department for women. On account of a rather low number of women prisoners in BiH, we do not recommend distributing them across an entity and sending them to different prisons to serve sentence. We also recommend that authorities should consider establishing prisons for women (which is present in Article 234 of FBiH Enforcement Law as an unrealized legal norm).

5.4. Accommodation

Rooms originally designed for women should be built within prisons. These rooms would allow for preparation of meals, with readily available toilets and bathrooms with options for supply of personal hygiene items, and with a special unit for pregnant and childbearing women.

Pregnant women, childbearing women and women with babies should have special rooms to live in, and should have access to special health care services.

Women drug addicts should be placed in special units with a special treatment program, which are described in more detail in this working group's document as "drug-free units".

- **Recommendation 8**

Reconstruction of units where women are staying
The reconstruction of prisons or units where women are staying is recommended, taking into account that they will be occupied by women and arranging them accordingly. In addition, options should be considered to establish an open department for women.

5.5. Pregnant women and women with children

Even though it is rare in BiH that pregnant women or women with children come to serve sentence (due to legal options for stay or postponement of sentence, as described in the introduction), special attention should be paid to this segment in order to ensure all preconditions for an adequate treatment of this population.

Article 48 of FBiH Enforcement Law states that a pregnant woman may only be employed for light work, and for the six weeks preceding childbirth and six weeks after childbirth she can only do the work approved by a physician. With respect to health care of pregnant women, RS Execution Law does not define labour-related rights. It was also mentioned in the introduction that these laws have varying provisions allowing for a child of up to three years of age to stay with his/her mother while she is serving her sentence.

It is readily noticeable that laws and by-laws treat this group of women and children in very limited detail, and they should therefore be amended accordingly.

- **Recommendation 9**

Set up special unit for mother and babies in prison
It is necessary to set up special unit in the prison for mothers and babies.

5.5.1. Pregnancy and maternity periods and child raising

- ***Medical check-ups***

According to medical practice, five to six check-ups during pregnancy are definitely not too many. Depending on the health status of pregnant women, the prison physician should recommend a dietary regimen.

- ***Childbirth preparation program***

This program would be implemented by the prison medical service and would include information for the pregnant woman about physiological mechanisms of pregnancy, child development and childbearing, and about self-control and breathing control during childbirth to help both herself and the physician.

It is definitely significant for the mental health of a pregnant woman to take part in selecting clothes and other material for the newborn. It is also essential for the future mother to get to know the space in which her child will stay and sleep.

- ***Treatment program for the newborn***

A pregnant woman should be trained and prepared to raise the newborn, which is a continuous process. Newborn care should be presented to the future mother through various topics covering the ways to hold, change, diaper, bathe and feed the child, as well as physiological processes in the child, etc. We recommend that contemporary literature in this field should be available to the women at this stage and at the childbirth preparation stage.

- ***Parenthood and maternal role program***

Through a series of lectures, women would be introduced to stages of child development and the preparation of nutritious and healthy meals for children; they would learn techniques for interactive mother-child play and how to identify anger and stress triggers in themselves and their children, and also to develop coping mechanisms.
In this way, mothers would develop more positive relations with their children and, following release, they would be able to help develop their social behaviour and become productive members of society.

5.5.2. Mothers and children in prison

Following maternity leave, the woman enjoys all the rights generally available to all childbearing women in BiH, in line with applicable legislation.

After the woman serving a sentence starts working, the prison needs to devise and organize certain methods to ensure babysitting for the child. Considering the presented information about the very low number of inmates with children, it would be rather difficult to organize a day-care centre within the prison given the physical conditions in numerous institutions in BiH, and also due to socialization requirements because the child needs company of his/her peers.

- **Recommendation 10**

Care of children in day-care centres outside prisons
In light of the foregoing, it is recommended that prisons address this issue by organizing care of these children in day-care centres outside prisons.

- ***Mother and child program***

This program promotes stability and continuity of the mother-child relationship. Its implementation should consider the best interest of the child, which includes child's safety, as well as his/her physical, emotional and mental well-being. Developing parenting skills and establishing a mother-child relationship is a concern of all women, including those who have broken the law and are imprisoned.

This program could be implemented by the treatment service staff.

5.6. Treatment programs

Prisons should have treatment programs for different groups of women prisoners, such as women who were victims of violence, drug addicts, pregnant women and women with children, disabled women, etc. These programs could certainly appreciate individuality of each woman, i.e. their specific biological, social and psychological characteristics.

5.6.1. Work and professional development

- **Recommendation 11**

Criteria that should be considered when deciding on a type of work for women
When deciding on the type of work for a particular woman, the treatment service is recommended to consider her health status, fitness for work, current vocational training and any wishes expressed, as well as to analyze labour market demand with employment bureaus and agencies. This would ensure that any scarce jobs in the labour market are taken into consideration and, depending on prison's capacity, certain jobs for women could be planned that would help them find a job sooner.

Based on assessment results, an expert team would produce a final opinion for every woman including a recommended occupation for that woman.

We also recommend that prisons should find ways to utilize intellectual capacities and knowledge of women to a greater extent because this population includes some women with university degrees.

- ***Program for employment outside the prison***

Since all three Enforcement Laws provide options for employment outside the prison perimeter under certain conditions, this institute seems to be employed rather infrequently.

- **Recommendation 12**

Make use of legal provisions to employ women outside prisons
In line with the recommendation and legal procedure, this legal provision could be used more frequently wherever the work and professional development of the woman is deemed purposeful.

- ***Employment programs***

These programs prepare women for employment following release and increase their employment prospects. Women learn to write a biography; learn ways to find jobs; learn how to answer questions during a job interview; learn to set realistic targets and learn to respect a job as a means to develop their own potential.

Having completed this program, women are better prepared to find a job and to keep a job, and also to effectively integrate into the community and avoid committing crimes again.

This program could be implemented by prison social workers in cooperation with employment bureaus. Programs would last 3 moths, taking place once per month in 1.5 hour sessions.

5.6.2. Education

Literacy programs
Primary school programs
Vocational education and training programs
Secondary school programs
Programs for access to university education

There are few women prisoner in BiH attending primary or secondary school. Without going into reasons behind this, we recommend that treatment services review actual educational needs of women and use this option if there is a realistic period of time available. We also recommend that women should be allowed to attain higher levels of education, provided that reasons of security permit it and if this is in accordance with the treatment program, to

ensure that this segment is not treated as a mere theoretical option that will not be implemented in practice.

Where schooling is being organized, prisons should work with employment bureaus to provide a review of desirable jobs and jobs in demand to ensure prisoners employment prospects. In this way, women would be trained for occupations matching market demand and their interests and preferences, and occupations that would ensure their financial independence and security following release.

As part of educational activities, inmates could acquire and develop skills in various areas, such as: practical skills, information-communication technologies, economics, business administration, foreign languages, horticulture, cooking, textile, hair and beauty skills, as well as in other areas of interest for the inmates. Those who acquire certain knowledge would be issued appropriate certificates and diplomas.

- **Recommendation 13**

Use of modern learning methods
To implement these programs, book learning should be supplemented with modern methods such as part-time study, distance learning, working with individual instructors or professors, etc., in cases when education cannot be organized either within or outside the prison due to security reasons or a small number of participants.

- ***Educational programs***

Educational work would cover the following topics:
- general education topics;
- health, family, protection measures and prevention of sexual, social and family violence;
- parenting, because a large number of abused women, due to preoccupation with other problems, do not devote sufficient time and attention to their children.

These programs would be implemented by educators and social workers.

5.6.3. Special programs

5.6.3.1. Psychotherapeutic work (supportive psychotherapy, corrective methods) with inmates

All forms of psychotherapy have the same aim: to re-establish some past, disrupted levels of functioning, and to eliminate symptoms of physical and mental suffering on the one hand and to enable personal growth on the other.

The aim of the psychotherapeutic work is to teach the prisoner something about his/her own abilities and limitations and to substitute new, socially acceptable and healthy behaviour patterns for prior behaviour patterns that

proved ineffective and inadequate. In addition, prisoners are provided assistance in resolving everyday issues that arise in the unit that may concern changes in the mental or physical status of prisoners, interpersonal conflicts, etc.

Psychotherapeutic methods

- supportive methods – suggestive and verbal-support methods;
- re-educational methods.

- Method of work: individual and group work;
- Frequency: 1 to 2 times per week;
- Session length: individual work 45 minutes; group work 60 minutes;
- Themes should be planned and agreed with prisoners in advance;
- The length of program is planned according to assessed needs;
- Implemented by: prison psychologists in cooperation with external psychologists.

5.6.3.2. Treatment of abused women

Violence against women

Violence against women most often includes:

- Physical violence (hitting, strangling, torture, beating, murder)
- Sexual violence (any non-consensual sexual activity)
- Psychological violence (mocking, objections, threats, isolation by friends and relatives)
- Economic violence (unequal control of shared resources)
- Spiritual violence (ridicule or destruction of cultural or religious convictions)

Violence against women perpetrated by their partners within their families is one of the most common forms of violence. BiH is a deeply traditionalist and patriarchal country in which family violence is most often viewed as a marital disagreement, due to the dominant role of men, and not as a societal problem; however, this has been changing recently.

In a large number of cases, abused women have traditional views of family and gender roles, and they endure frustration and direct their anger inward, becoming isolated from their immediate family and friends. In time, they develop a strong sense of guilt, low self-esteem, an inferiority feeling, and it is not uncommon for them to exhibit self-destructive behaviour, and well as various forms of addiction to psychoactive substances. Their difficult position is further exasperated by the government system's inefficiency in providing support to victims. Some women actively seek help from competent institutions, but are frequently met with a lack of understanding or inability to stop the abuser, and are forced to return to the family where violence continues, often in even more dangerous forms that before the abuser were reported. Violence coupled with economic dependence and social isolation leads such women to situations where they start committing crimes.

- ***Program for abused women***

Program goals

The main goal of the program is to apply different forms of treatment work and to provide a continuous emotional, psychological, medical and social support to help women who were victims of abuse and are serving prison sentences, so that they can improve the quality of their lives; reduce feelings of humiliation, self-loathing and hate; improve their self-respect and self-confidence; all with a view to ensuring a successful reintegration into their social environment following release from prison. It is a known fact that all women who have suffered trauma do not need an intervention or do not want to discuss their traumatic experience. Therefore, the needs and wishes of every woman who has suffered trauma should be respected.

Contacts with non-governmental organizations and safe houses are desirable to ensure their help in treatment and to ensure visits to safe houses by this group of women during their prison term.

Activities

- psychological counselling;
- individual and group therapy;
- workshop activities;
- education, schooling and professional development;
- preparation for release.

Psychotherapy for abused women

Prisons in BiH should provide for trained therapists who could implement psychotherapy once or twice per week**.** Such psychotherapy would aim at expanding the existing range of ego–defence mechanisms; reworking traumatic experiences; changing disturbed thought and behaviour patterns; regaining a sense of security and control; and promoting a positive development of personality.

The focus would be on psychodynamic therapy (supportive and expressive psychotherapy), and on integrative and cognitive-behavioural therapy (exposure therapy, cognitive therapy and anxiety management).

Individual and group work for abused women

Group session would take place two times per week under guidance of a trained therapist. This type of therapy would have special significance in treating the target population because, while not going deep into the personality, it allows group members to achieve interaction; overcome their own loneliness; exchange traumatic experience; and it offers them a sense of security and opportunities to create a group identity. Topics for initial stages of work would include development of social skills that are important for problem solving and decision making, and creating a positive self-image; strengthening

of self-respect and self-confidence; coping with stress and anxiety; and emotion management and inhibition.
During therapeutic work, prisons would preferably allow women to have as much contact as possible with their family members and close friends.

Workshop activities

We recommend that workshops should generally be creative, with an emphasis on fabrication and painting of items and jewellery (made of common and modelling clay, as well as plaster and ceramic), painting and making of greeting cards and gifts. In addition to ceramic and painting workshops, if there are provisions to do so, a textile and tailor workshop and a gardening workshop would be formed.

Prisons would have an option of entering into agreement with trading and other organizations in order to sell the products. The proceeds would be used to purchase material or improve living conditions in the prison.

Education, schooling and vocational training

It is very important to ensure that abused women are involved in all forms of vocational training, schooling and education, as recommended in this document.

Preparation for release and assistance after release

In addition to centres for social work whose mandate includes treatment of this group of persons by providing various forms of assistance, abused women should be able to turn to safe houses following their release. In places where such organizations exist, the prisons could act as intermediaries to ensure that released women can spend some time in the safe house until they are ready to lead an independent life.

5.6.3.3. Treatment of drug misusing women

In recent years, there has been an increasing number of women serving sentences for drug-related crimes as well as of drug misusing. Women use drugs more frequently; they use more powerful drugs; and they use them for different reasons then men. Persons who abuse drugs are generally viewed as weak, immature, dependent personalities, who are frequently neurotic or have personality disorders. Literature shows that women drug misuser serving sentences had been exposed to different forms of abuse in the past and that they exhibit a higher degree of mental and emotional problems and has a higher suicide rate.

Gender-related drug abuse treatment must be based not only on biological differences, but also on social factors that may influence motives for use and abuse of drugs, reasons to seek treatment, treatment environment, type of treatment and consequences of a failure to implement treatment. Other

circumstances that may influence treatment are possible pregnancy and child care; financial (in) dependence and the way in which treatment is started.
Thus, there are many circumstances in women's life that can affect specifics of treatment for this group. Women encounter much more difficult issues in treatment than man, which may be caused by their education, childhood or family history.

For treatment and program development purposes, consideration should be given to programs presented in the document titled "Treatment Guidelines for Drug Misusers in Prisons in Bosnia and Herzegovina."

5.6.4. Leisure activities

The recommendation for organizing prisoners' free time is to allow them to pursue the following activities for spiritual and psychological growth and development:

5.6.4.1. Journalism club
A journalism club could launch a magazine that would deal primarily with prison issues and family violence for women who were victims of violence. In addition to prisoners who would write articles and act as magazine editors, the prison staff would also participate to discuss certain topics from a professional angle.

5.6.4.2. Drama club
Involvement of women in a drama club would aim at developing their spontaneity and creativity, which are quite relevant for spiritual growth and development of a person.

5.6.4.3. Music therapy and music clubs
Aims of *music therapy* are to relax, stimulate and activate a person; to free the person of internal emotional charge; to support the person in expressing emotions and properly directing them; and to ensure the person can socialize and rehabilitate. Music therapy includes listening to classical music and selected relaxation therapy pieces.

For institutions that do possess musical instruments, it would be very beneficial to organize a musical club for this type of activity.

5.6.4.4. Sports clubs
Sports games encourage a sense of fellowship and belonging, which makes a person realize that others may share the same motives; adjust her own views to the views of others; and change and adjust her own behaviour to match the needs and requirements of her group. Correctional significance of physical activities should not be neglected: it includes development of positive moral characteristics such as determination, courage, perseverance, initiative, self-control, self-initiative, etc.

So far, sports clubs in prisons have proven extremely well-accepted and beneficial in strengthening prisoners' physical and health fitness and ensuring

mental relief and relaxation. Prisons should ensure facilities and conditions to pursue basketball, soccer, volleyball, handball, table tennis, gymnastics, fitness and other similar activities.

5.6.4.5. Art clubs (sculptures, paintings, photo club, pottery, ceramics, etc.)
Artistic expression would aim at helping prisoners relax, express their unconscious conflicts that they are unable to vocalize, express their creative abilities, but also to satisfy their need to stand out. The prisons could organize exhibitions during a certain period that could also include sale of artwork. Artistic expression and discussion of paintings has a therapeutic and diagnostic value – the individual will experience and interpret a work of art according to her own impression. The most common art techniques within women's units are drawing (pencil) and painting (watercolour, wax painting).

5.6.4.6. Watching radio and television shows
The media are a link between prisoners and the outside world, both trough providing information and following developments and through their didactic and therapeutic significance.

5.6.4.7. Reading therapy and literary club
Reading and discussing literature has a great therapeutic significance in working with prisoners, especially if it involves literary pieces in which women prisoners may find positive roles models to identify with. Various procedures would be implemented in the course of reading therapy, such as: writing letters to literary characters; making drawings about characters; stage performance of drama pieces; retelling the content of a book in a group setting, etc. Reading therapy has a positive effect on evocation and vocalization of emotionally charged experiences.
In addition to changes in the emotional part of the personality, reading therapy also leads to intellectual, interpersonal and behaviour changes among women.

5.6.4.8. Organizing visits to various institutions in the city
These activities would be implemented after the person becomes legally entitled to use prison leaves. These include visits to the cinema, theatre, sporting events, various cultural-artistic, religious and humanitarian organizations, social rehabilitation clubs, safe houses, etc., and they would aim at making sure the person becomes involved in mainstream events in her social environment and prepared for life outside prison.

5.6.4.9. Foreign language learning
This is a highly desirable activity. It is educational in nature and acquisition of such knowledge reflects on formation of value judgments. Classes would be held once per week.

5.6.4.10. Information technologies club
Contemporary forms of communication as well as education require certain knowledge of information technologies.

5.6.4.11. Religion/religious rights

Women need to be provided with rooms to perform religious rituals and satisfy their religious needs, including appropriate religious literature.

5.6.4.12. Miscellaneous

Hiring other organizations, well-known artists, reporters/journalists, painters, etc. are just some of the possibilities.

These activities could be implemented by educators as well as external volunteers.

5.7. Contact with the outside world

5.7.1. Maintaining ties with the family

Ties with the outside world are known to be important while serving a prison term. They should therefore be encouraged and all forms of communication should be allowed between the prisoners and members of his/her family (letters, phone calls, regular and special visits and benefits).

Since there are only two units for women in BiH, their families are often forced to come from a distance to make a visit. These visits are less frequent in practice due to inability to travel frequently.

- **Recommendation 14**

Significance of family visits

It is recommended the following:

- approval of longer and extraordinary visits of family members, especially for women who have children;
- there should be separate rooms for child visits with certain items and atmosphere that will make children feel comfortable;
- by-laws should incorporate options for children and mothers to stay together overnight on prison premises;
- by-laws should incorporate options for child visits outside the prison perimeter for mothers entitled to benefits; and
- private/conjugal visits should be allowed.

5.7.2. Preparation for release and post penal assistance

Preparation for release begins at the beginning of the prison term and is an integral part of the individual treatment plan. To this end, prisons maintain cooperation with centres for social work, employment bureaus and other stakeholders.

- ***Preparation for release programs***

We recommend that preparation for release programs should be implemented by social workers in the prison, and that these programs should include:

- assistance in finding employment (where to go, how to write an application, how to behave during a job interview, etc.);
- assistance in finding accommodation (e.g. safe houses);
- assistance in enrolling in schools or courses, or in resuming education following release;
- assistance in resolving family issues;
- assistance in seeking medical help or in resuming treatment following release, in cooperation with the medical service;
- engaging outside institutions to become more actively involved in post penal work.

5.8. Special categories of prisoners

5.8.1. Women in pre trial detention

This document does not discuss women in pre trial detention due to their specific legal situation, even though most of the discussion could also apply to them.

5.8.2. Foreign national women

Under law, foreign nationals are not taken as a special group in terms of sentence serving. There are difficulties involved in cases where foreign nationals cannot speak the official language of BiH. We suggest that during the prison term this population should be provided occasionally with an interpreter so that they can learn about their rights and obligations. In addition, other language-related content should preferably also be provided (e.g. watching satellite TV stations, provision of periodicals in the inmate's language, etc.)

5.8.3. Juvenile female prisoners

Juveniles in conflict with law are often detained together with adult women due to limited capacities. This document does not discuss juveniles and their delinquency.

5.8.4. Disabled prisoners

Specific needs of disabled prisoners depend on the type and degree of their disability.
Disabled women prisoners face difficulties both in accessing services and in observing prison rules, but also in participating in prison activities that are not adjusted to their needs. Due to barriers caused by architectural layout of prisons, immobile prisoners cannot access the dining room, library, toilets, workstations, recreation areas and visit rooms.
These persons have special needs in terms of health care. They require special physical therapy and regular sight and hearing examinations. They also need to be allowed access to aids, such as wheelchairs.

Prisoners should be accommodated in locations suitable to the degree and type of their disability. Attitude and manner of treatment are crucial. These persons should enjoy rights equal to those enjoyed by others.
Consultations with organizations working with disabled persons should be an integral part of the work with female inmates belonging to this group. In addition, all issues related to this population should be analyzed to ensure that any shortcomings can be addressed more effectively.

5.8.5. Ethnic and racial minorities

This prisoner group has special needs on grounds of their culture, tradition, religion, language and ethnicity. Women are disadvantaged in two respects in this case, due to their sex and their cultural affiliation. They must choose whether they will use programs adapted for women or those for ethnic and racial minorities, which are generally organized for men only. Prisons should therefore be in contact with representatives of these groups. Family ties are also very important. Staff training should include introduction to different cultures and their understanding, without any kind of discrimination.

5.8.6. Women with special sexual preferences – lesbians, persons with same-sex preference

Persons from this group are often discriminated against in prisons. It would be very good for prisons to network with organizations outside the prison system that deal with protection of their rights, and to consult them with respect to policy making and treatment issues.
It is essential that the staff is trained to respond in cases of sexual or any other abuse, and to recognize any suicidal intentions.
Programs need to be designed and implemented focusing on rape prevention and provision of information to women on how to protect themselves.

5.8.7. Older women prisoners

The number of prisoners at an advanced age is rising, especially in developing countries.
Programs intended for this population should be implemented and adjusted to their needs. Following a careful risk assessment and ensuring that other legal requirements are met, this category should be considered during pardoning and conditional release periods.

5.8.8. Women with terminal (incurable) diseases

Persons with terminal diseases include those suffering from diseases that cannot be expected to improve and not end in death. In this case, the primary goal is provide health care 24 hours a day and prevent the spread of disease. These prisoners are generally imprisoned closer to their home, and should in any case be allowed to be visited by parents, relatives and friends.

5.9. Staff training

Staff training is imperative for the staff involved in treatment of women. The role of staff in establishing and maintaining a secure, well managed and humane prison that implements rehabilitation programs is very important. The staff working with women should be sufficiently trained in special needs of women prisoners, focusing on gender-related needs and related management of women's units or prisons. Equally important is to have a sufficient number of staff to ensure that the work with women is based on assumptions of gender equality.

The staff training program would include subjects covered in this document and would be compulsory for all those who work with women in the prison.

Implementation of special programs would require professionals trained in special areas of work with addicts, suicide prevention, mental health care, etc.

- **Recommendation 15**

Topics to be considered for staff training
Prison management should take into consideration all the foregoing when planning staff training.

5.10. MANAGEMENT OF WOMEN'S PRISONS

We have mentioned earlier that women in prisons are vulnerable on certain grounds because prisons and programs are designed to meet the needs of the majority prison population, which are males. In addition, due to the low number of women in prisons, they are placed far away from their homes, which make it difficult to maintain ties to their families and children, affecting their mental well-being and options for social reintegration following release. This means that special needs of women that are different from men's needs should be recognized, which must also reflect on prison management and management style, assessment and classification, programs offered, health care and treatment of women with children.

It is generally accepted that the way women's prisons or units are managed needs change. The management method in women's prisons or units should take into account:

- awareness of different needs of women;
- ability and willingness of the prison staff to communicate with women prisoners openly and less authoritatively;
- skills such as active listening and patience in explaining rules and expectations;
- awareness of emotional dynamics and ability to respond decisively, fairly and consistently.

In some countries in the region, prisons which include women are run by heads who are at the level of prison director, and therefore a position should be taken on a possible application of this practice.

- **Recommendation 16**

Heads of women's units
It is recommended that issues covered by this document are coordinated by the head of the women's units. We also recommend that women's units should have their own heads.

- **Recommendation 17**

Develop an implementation timeframe for this document
It is recommended that Sectors for Execution of Criminal Sanctions at Ministry of Justice level should establish a working group to further develop this document and adapt it to local conditions, and to develop an implementation timeframe.

5.11. STATISTICS

- **Recommendation 18**

Analysis of statistical indicators related to women
It is recommended gathering, processing and analyzing all relevant statistical indicators that relate to women serving prison sentences in BiH.

VI. SUMMARY

In the area of implementation of prison sentences for women there is a new prevailing philosophy that advocates for a new direction centred on women and their special needs, from construction or adaptation of prisons adapted to the women prisoners, to programs specifically designed for women and to changes in management methods in women's prisons, which are all objectives sought by prison management. Preparation for release should also be mentioned, as well as establishment and maintenance of ties with the outside world and institutions in the community. We have attempted to present all of this in this document.

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Joint Project between
the European Union and the Council of Europe

"Efficient Prison Management in Bosnia and Herzegovina"

III. IMPROVING THE SITUATION OF VULNERABLE AND HIGH-RISK PRISONERS

TREATMENT GUIDELINES AND PROGRAMS FOR DRUG MISUSERS IN PRISONS IN BOSNIA AND HERZEGOVINA
(3)

Sarajevo, April 2010

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"Treatment guidelines and programs for drug misusers in prisons in Bosnia and Herzegovina" is the final document of the project.

CONTENTS

I. INTRODUCTION

Drugs as well as alcohol are linked to various forms of criminal behaviour. This linkage is rather complex and the number of prisoners associated with drugs in the prison population is on an increase.

Dealing with drug issues in prisons does not only mean dealing with addiction of a single prisoner, but rather dealing with the problem of security and protection of all prisoners, as well as staff working in prisons. Treatment of drug misusing prisoners (hereinafter drug misusers) is a complex process that includes various stages and activities and requires a multidisciplinary approach.

II. TREATMENT OF DRUG MISUSERS IN PRISONS IN EUROPEAN COUNTRIES

Research has shown that there has been an increasing number of persons convicted for drug-related crimes in European countries in recent years, as well as an increasing number of drug misusers coming to prisons. There is also a rise in the number of those who use drugs in prisons, which creates fertile ground for the spread of infections such as HIV and Hepatitis.

In most European countries prison administrations have developed clear strategies to combat drugs in prisons, which were developed on the basis of and in compliance with national strategies for combating drug abuse. These strategies include identification of addicts, a security component and a range of programs available to drug misusers in prisons.

Services provided in prisons include the following:

- information on drugs and health;
- screening for infectious diseases and vaccination;
- testing for drugs;
- addiction treatment including detoxification, substitution therapy, various rehabilitation programs and life without drugs;
- needle exchange in some countries;
- preparation for release, including counselling on the possibility of overdose; and
- networking with outside institutions.

Prison systems are hesitant to introduce needle exchange programs because they believe this would contribute to an increase in drug abuse, accidental needle punctures and conflicts among prisoners and between prisoners and the staff, considering that prisoners could use them as a potential weapon against the staff. However, introduction of needle exchange in certain countries has shown that this is not the case.

It is very important to provide information to prisoners and the prison staff about HIV/AIDS, Hepatitis and other infectious diseases and their transmission. In doing so, modern training methods and visual aids should be used. Understanding of these issues will result in a better cooperation between the staff and prisoners in preventing the spread of HIV in prisons. Particular attention should be paid to foreign nationals, and they should be provided with information in a language they understand. As regards treatment, it is very important to stress the significance of an integrated approach between the prison medical service and health care services in the community.
There are frequent problems in admitting drug misusers to the prison because it leads to withdrawal that may include self-inflicted injuries and violence. This is why detoxification alone is not sufficient and should be followed up by an appropriate abstinence program. On the other hand, it is common knowledge that infected persons also come to prisons. They require both health care and psychological support.

It has also been shown that substitution therapy is efficient in reducing illegal drug abuse, reducing criminal activities, preventing deaths from overdose and preventing the spread of HIV infection. Substitution therapy also contributes to drug misuser's stabilization and improvement of his social functioning and work and employment opportunities.

Prison administrations make great efforts to suppress a drug "black market" within prisons and to identify drug misusers to be able to offer them treatment and support to abandon drugs. This in turns reduces the likelihood of repeated crimes.

We will here briefly note a trend in EU countries according to which use of illegal drugs or possession of drugs for own use is deemed a relatively minor misdemeanour that should not be subject to the sanction of depriving of liberty. Because sanctions should correspond to the severity of offense, drug misusers who perpetrate misdemeanours or criminal offenses are provided with medical, psychological and social treatment programs rather than being detained and imprisoned. As part of implementation of these alternative sanctions, the perpetrator should accept a treatment program. Implementation of these measures has shown that a corrective institutional approach combined with treatment results in better outcomes than judicial intervention *per se* considering that addiction is a medical issue. Therapeutic measures or treatment measures are integrated in laws as an alternative or complement to sanctions in misdemeanour or criminal proceedings and are to be used for sentencing purposes.

- **Recommendation 1**

Amendments to criminal codes
It is recommended that the current criminal codes should be amended to include all options provided for in the legislation of EU member states relating to drug misusers. These options include alternative serving in therapeutic

communities and other forms of medical treatment and social rehabilitation, which should be provided for in the corresponding law.

III. COUNCIL OF EUROPE RECOMMENDATIONS AND CPT STANDARDS[40]

European Prison Rules[41] (hereinafter: EPR) do not expressly refer to treatment of drug misusers, but they do stress that prisoners shall enjoy the same access to health services as is available elsewhere in the state, without discrimination on grounds of their legal status. Since addiction falls within the field of medicine, EPR specifically underline that medical services shall be organized in close relation with the general health administration of the community or nation. During examination of a prisoner being admitted to the prison, the physician working in the prison shall, among other things, make sure that assistance is provided to those having health issues related to withdrawal symptoms resulting from use of drugs. In addition, prisoners infected with HIV virus are not isolated solely on the grounds of carrying such virus.

Health care in prison is defined in more detail in the Council of Europe Recommendation R (98) 7 concerning the ethical and organizational aspects of health care in prison, and in Recommendation R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases.

The international principle of equivalence is therefore of fundamental significance for the promotion of human rights and good health practices in prisons. This principle also has a significant impact on a reduction in drug abuse and prevention of the spread of infectious diseases in prisons and the community.

In its reports, CPT pays particular attention to health care issues in prisons and underlines that prisoners are entitled to the same level of medical care as persons living in the community. This principle is inherent in the fundamental rights of the individual and includes treatment of drug misusers within the prison system.

IV. DEFINITION

Studies have shown that addiction is a disease with clear and predictable symptoms, and that it is a chronic disease. Addiction has its own features and affects thoughts, behaviour and emotions. Addiction is a disease that develops gradually and is actually a long process. It is vital to know the

[40] Substantive sections of the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf/E (2020)1 – Rev. 2006

[41] Recommendation (2006)2

development and interaction of different factors affecting the development of this disease to be able to understand an individual in the course of treatment.

Accordingly, treatment of drug misusers is a long (even a life-long) process, with unpredictable dynamics and final outcome, similar to other chronic diseases. The course of disease is characterized by remission and relapse phases; however, a relapse is not deemed a failure in treatment, but rather a part of clinical picture. The goal of treatment is to establish as long periods of stabile abstinence as possible.

V. NATIONAL STRATEGY ON SUPERVISION OVER NARCOTIC DRUGS, PREVENTION AND SUPPRESSION OF THE ABUSE OF NARCOTIC DRUGS IN BOSNIA AND HERZEGOVINA for the period 2009 – 2013 and THE STATE ACTION PLAN FOR FIGHTING ABUSE OF ILLICIT DRUGS IN BIH 2009-2013

Bosnia and Herzegovina (hereinafter: BiH) develop national policy on suppression of misuse of drugs and the development of the Drug Control Strategy shall show the intention of the Government to provide assistance in a systematic and proper way to the most vulnerable population of the society and to those who would not be able to receive appropriate protection without the engagement of state institutions.

BiH does not possess methodological and single system on recording and controlling in the area of misuse of drugs, and, therefore, does not have accurate data on this phenomenon. However, the general impression is that drug addiction has been spreading across the country. Sporadic researches which have been conducted in BiH support the opinion that the current situation in terms of drug addiction does not differ a lot from situation in other neighbouring countries.

The analysis has revealed the following:

- drugs are widely available in BiH
- the percentage of young people and women consuming drugs is increasing
- large number of traffic accidents connected to the use of drugs
- high correlation between the use of drugs and suicides, poisoning, crime and violence
- significant number of risk groups created during the war period: permanently disabled persons, displaced persons, children without parents, demobilized soldiers and other risk groups
- insufficient funds allocated for dealing with this problem in terms of prevention, education, repression and treatments

5.1. Parts of the Strategy that refer to the prison system

Prevention within prisons

Informing, education and discussions on harms of drug abuse and HIV, and counselling, should be preferable educational forms of influencing the conscience of a prisoner-addict, a juvenile put into a Penal-Correctional Institution, from the prison staff, as the most-spread method of reducing damage in European prisons.

Using modern educational methods and visual aids will lead to more quality understanding of a problem, and will have direct influence to improvement of cooperation between the prisoners and the staff effecting reduction of spreading drug abuse in prisons. Involving drug addicts in development, creation and distribution of informative materials is of critical importance for improvement of availability of those materials. As for the context, the materials should talk about risks of syringes and shared use of syringes, and giving advice on how to reduce those risks.

Medical treatment in pre-trial detention and prisons

Medical treatment for drug addicts in prisons requires addiction treatment to be conducted by the same principles and conditions as for the addicts outside the prison system, which was not a case so far. This implies a significant number of experts and their supervision outside the prison system. It shall be necessary to ensure accommodation capacities within the special »drug-free« units. Also, it shall be necessary to provide for the prisons the tests for detection of psychoactive substances in body fluids. This type of testing shall be conducted in accordance with the verified protocols. Prisoners shall be provided with a voluntary confidential counselling; tests on hepatitis B and C, HIV and TBC, as well as with appropriate treatments.

The centres shall be encouraged to participate in programs implementation within the prison system, with emphasis on providing services and assistance in organizing gradual acceptance of prisoners who are drug addicts. A network shall be created between the prison system and institutions competent for drug addicts' register.

Based on the confirmed diagnosis, the treatment of drug addict prisoners shall be conducted upon the court decision (pronounced mandatory addiction treatment).
Continuation of the treatment that have started prior to prison shall be ensured during the time spend in prison, as well as an inclusion of addicts into treatment, with the possibility to establish special units within the prisons.

Substitution programs, social-therapeutic programs, as well as distribution of condoms represent the minimum standard for harm reduction in prison conditions.

Pre-trial detainees are special category of individuals within the prison system. During pre-trial detention period, detoxification by methadone therapy shall be implemented, along with a regular health care, as well as harm reduction activities.

The Ministry of Justice, in cooperation with the competent Ministry of Health, shall be responsible for organization of treatment for drug addicts in prison and pre-trial detention centre

The Ministry of Justice, in cooperation with the competent Ministry of Health, shall be responsible for organization of treatment for drug addicts in prisons.

Role of the Institutes/Centres

The Institutes/Centres shall provide various types of support to drug addicts in accordance with the citizens' requirements at specific area: and Institutes/Centres shall provide professional support when it comes to organization and implementation of treatment for drug addicts in prisons.

Social Welfare Program

A social welfare system shall be obligated to ensure among others adequate conditions for the post treatment acceptance of juveniles and adults who are released from prisons and juvenile detention centres.

Harm Reduction Programs

When it comes to persons who injected drugs, there are two applicable types of activities from the wide range of harm reduction methods: already mentioned substitution with the opiate agonists, and programs for replacement of needles, syringes and injection tools.
Another program – promotion of the safe sexual behaviour and use of condoms – does not refer to addicts only.

Field Work

Field work enables aid and services to be provided on places where drug consumers reside or inject drugs. It is conducted by the health care and social institutions, non-governmental organizations (hereinafter: NGO), religious institutions and associations of citizens.

Addicts' Rehabilitation Programs

The programs are implemented by the health care institutions, social sector, non-governmental sector and judicial system (prison system).

In the field of rehabilitation of addicts, the following priorities have been established:

a) Developing motivation techniques for accessing rehabilitation centres and therapeutic communities;

b) Opening rehabilitation centres and therapeutic communities in the local community, prisons, juvenile detention centres and similar, which shall provide a professional work with stable abstainers and their families, with continuous education and specialisation of the professional workers who conduct programs, and
c) Establishing associations of addicts, associations of parents and other family members for the purpose of self-support and mutual support.

Resocialisation and Social Integration

When it comes to addicts' resocialisation, the following criteria have been established:

a) Providing support in completion of elementary and secondary education or re-training;
b) Stimulation of employment and self-employment programs for addicts who have completed rehabilitation in therapeutic communities, prison units, detention centres or similar, or who are on the substitution therapy;
c) Reintegration of addicts, who are not able to or are not willing to quit consuming drugs, into civil society, find suitable premises, or shelters;
d) Creating nets of institutions which would support the re-socialization of addicts. Coordination and cooperation among all competent institutions involved in the process of re-socialization such as (social work centres, therapy communities, healthy and educational institutions, employment bureau, associations…)

Civil Society

Since this is considered a broad social issue, civil society organizations, private sector organizations and volunteers are required to actively take part in all stages of drafting, adopting and implementing legal solutions and strategic documentation at all levels, as well as in implementing scheduled program activities.

5.2. National Action Plan

The National Action Plan (hereinafter: the Action Plan) has been designed based on strategic goals defined in the above-mentioned Strategy. Every strategic field includes prisons, and we will therefore now identify everything that relates to prisons.

1. STRATEGIC AREA: PREVENTION

Prevention in prisons

Establishment of the programme for education and informing the population prisons and early detection measures

1. Defining measures for raising awareness of the responsible institutions on vulnerability of prisoners when it comes to drugs, which means that special informative campaign in prisons should be developed.
2. Development and implementation of special prevention programmes in prisons and educational homes for minors.
3. Development and implementation of programmes for health care education for prisoners.
4. Introduction of drug testing in prisons, which means routine testing of presence of drugs in prison premises and biological material of prisoners, has been introduced. Ministry of Justice and prison system develop close collaboration with health care institutions and educational system.
5. Development and implementations of programmes for education of prison staff on abuse of psychoactive substances and addiction, as well as early detection.
6. Encouraging preventive work with the prisoners and competitions for funding of prevention projects in and with prisons are being published.

Ministries of Justice and prisons cooperate with health care institutions, police training centres, units of local self-governance, NGOs.

2. STRATEGIC AREA: EDUCATION, STATISTICS AND RESEARCH

Education

1. Development of programmes for education of staff in prisons targeted and specific programmes for continuing education of prison staff in the field of prevention and taking care of addicts, as well as in the field of reduction of the offer of psychoactive substances in prisons have been adopted and implemented.

Statistics and research

2. Networking of the system of prisons with the institutions maintaining the registry of addicts and the protocol for exchange of information has been developed. Prisons collaborate with public health care institutions.

3. STRATEGIC AREA: MEDICAL TREATMENT

Covering prisoners with programmes for medical treatment on same principles as for other addicts. Ministries of justice and prisons cooperate with ministries of health, institutions for primary health care, institutions that deal with addiction, NGOs and others

1. Ensuring the common set of standards for medical treatment of addiction in all prisons. Joint standards in sense of human resources potentials and equipment for medical treatment in all prisons are defined.
2. Motivating and hiring a sufficient number of experts for treatment of addicts in prisons, and ensuring supervision of experts from outside the prisons.
3. Defining the programmes for early detection, comprehensive medical treatment of addicts in prisons within the framework of individualised treatment of prisoners.
4. Adoption of the protocol on compulsory measures for medical examinations and triage (within the first 24 hours) upon admission of the addict, for identification of illicit drugs abuse addiction.
5. Development of special motivation techniques for medical treatment of addicts in prisons.
6. Introduction of a possibility for a methadone therapy in all prisons.
7. Provision of prisons for tests and detection of psychoactive substances in accordance with the verified protocols.
8. Ensuring the measures of detoxification of pre-trial detainees and prisoners
9. Ensuring the special units within the prisons for treatment of drug addicts as well as special programs. Drug free units and methadone programme should establish, as well as suboxon programme and others.
10. Ensuring continuation of medical treatment that had been initiated before the imprisonment. Integrated treatments should be provided from the moment of admission to until the release.
11. Provision of possibilities for counselling and testing against ineffective diseases in prisons.
12. Encouraging the centres/institutes to participate in implementation of the programme in prisons. and ensuring of provision of services and assistance in post-penalty acceptance for addicted prisoners.

4. STRATEGIC AREA: REHABILITATION

Ensuring the capacities for rehabilitation and regulation of their functioning

1. Development of motivation techniques with joining the therapeutic communities and the rehabilitation centres. Prisons cooperate with centres/institutes for rehabilitation, centres for social work and NGOs.
2. Establish cooperation with therapeutic communities to identify former prisoners who have expressed interested in a continued treatment. This requires definition and application of cooperation protocols among competent institutions and between these institutions and therapeutic communities.

5. STRATEGIC AREA: RESOCIALISATION

Ensuring resocialisation of former addicts and imprisoned addicts in all areas of the society, especially from the aspect of development of social skills, encouraging education and employment.
Prisons cooperate with competent services during the preparation for release.

1. Development of special programmes for re-socialisation of former addicts and post-penal care of former addicts in prisons.
2. Defining of measures for encouraging companies that decide to employ former addicts and prisoners and defining the system for protection of data in accordance with the principle of confidentiality of the State Strategy.
3. Supporting NGOs that deal with resocialisation of former addicts and prisoners
4. Defining the programmes for employment and self-employment of addicts who went through the rehabilitation programmes or they are included in the maintenance therapy.
5. Establishment of small reception units, so called "houses on half of the way" and ensure supervision.
6. Establishment of probation services
7. Establishment of the coordination between prisons and probation services for providing the continuity in taking care of the addicts and their resocialisation.

6. STRATEGIC AREA: REDUCTION OF DAMAGE

Ensuring reduction of damage in prisons

1. Provisions of distribution of condoms during private visits (conjugal visits) locations for disposal have been ensured.
2. Provision of availability of voluntary confidential counselling and testing against hepatitis B an C, HIV and TBC and medical treatment. Prisons cooperate with health care institutions.

7. STRATEGIC AREA: REDUCTION OF THE OFFER

Ensuring reduction of the offer in prisons which include good cooperation between Ministries of Justice and prisons and police agencies.

1. Introduction of new technologies for detection of drugs in prisons
2. Regulation of authorities of the law enforcement agencies in prisons and harmonised provisions of the Law on Criminal Proceedings and the Law on Enforcement of Criminal Sanctions related to the role of police agencies in prevention of bringing in and dealing of psychoactive substances in prisons.
3. Ensuring mechanisms for exchange of information and coordination between prisons and law enforcement agencies The protocol on data exchange should be signed.

4. Improvement of compliance with professional standards and disciplinary measures towards the staff in the prisons, which include supervision over the work of prison staff.

8. STRATEGIC AREA: ESTABLISHMENT OF AN EFFICIENT SYSTEM FOR FIGHTING ABUSE AND TRAFFICKING OF PSYCHOACTIVE SUBSTANCES

1. Encouragement and professional assistance in adoption of strategic plans and work programmes for all institutions that are involved in fighting against abuse of psychoactive substances
2. Ensuring a coordinated implementation of the Strategy and the Action Plan among all institutions and bodies that are involved in fighting against abuse of psychoactive substances
3. Establishment of special mechanisms for cooperation and its improvement between the governmental and non-governmental sector in the field of fighting of abuse of psychoactive substances (The Office for Narcotics, responsible ministries, NGOs)
4. Strengthening of the international cooperation with systems of jails from other countries and systems for treatment of addictions and rehabilitation in prisons (The Office for Narcotics, justice ministries).

5.3. Strategy and Action Plan provide a wide range of options to introduce various activities and work with drug misusers in prisons

- **Recommendation 2**

Develop strategy for working with drug misusers in prison

Based on this Strategy and Plan, the Ministry of Justice's Sector for Execution of Criminal Sanctions (hereinafter: the sector), working together with prison staff and external experts, should develop a strategy for working with misusers in prisons. In addition, Enforcement laws should be amended and these amendments should serve to also amend secondary legislation to make them consistent with the Strategy.

Legal amendments would, among other things, include:

- An option for postponement of enforcement of sentence: completion of a started addiction treatment outside prison because its interruption would affect an effective completion of the program - this would require an option for postponement of enforcement of sentence;
- Option to establish a special unit (drug free unit) and possibly develop a rule book: "a special drug free unit may be formed in the prison, which may be defined in more detail in a rule book, as necessary";
- Violations of discipline: more serious violations of discipline should include possession, entry, hiding and production of alcoholic beverages and narcotics, as well as any other illicit items;
- Testing for drugs: the security service staff may test a prisoner for alcohol and drugs if there are signs that the prisoner is under the influence of alcohol or an illicit drug in the prison or at admission to the

prison. This testing is carried out as described in the regulation governing the work of security service (this regulation stipulates that security service staff may, with the consent of the prisoner, carry out testing for drugs. If the prisoner refuses to undergo testing, he is considered to be under the influence, and if the prisoner does not agree with the test results, he may request a control testing to be done at his own expense. If the prisoner admits to using drugs, there is no need to perform the testing. Everything is recorded in minutes signed by the prisoner and a prison official. A more detailed testing for drugs is described more closely in an act of the Minister of Justice); and

- Prisoners should be allowed to undergo confidential testing for HIV and Hepatitis viruses along with counselling before and after the test – this issue should be defined under an article of the enforcement law.

- **Recommendation 3**

Develop instructions for treatment of drug misusers in prisons

The Ministry of Justice's Sector, working together with prison staff and external experts, should consider developing a strategy to overcome drug-related problems in prisons, and develop instructions for treatment of misusers (rehabilitation programs). Treatment programs in prisons are equivalent to those implemented in the community.

Among other things, this strategy would have to include:

- restrictions on and prevention of entry of drugs into prisons, and detection and suppression of the prison "black market";
- control of letters, packages, visit procedures, outside wall of the prison and technical security; revocation of benefits; searches of prisoners and rooms; intelligence data gathering; use of dogs; cooperation with police forces, etc.;
- identification of staff that may be included in such activities or may be at risk of corruption;
- programs to be implemented in prisons;
- program content;
- program implementers;
- forms of work in the programs;
- program targets;
- therapeutic response;
- advice about dangers of resumption of drug use;
- a statement confirming prisoner is aware of qualification requirements to receive substitution therapy, as well as reasons for its termination;
- procedure for urine tests with a record on drug tests;
- prison staff training;
- forming of a multidisciplinary team; and
- institutions that prisons cooperate with.

Within this strategy, each prison shall develop its own plan to combat drugs, which includes:

- security procedures to prevent entry of drugs into prison;
- drug testing instructions and procedures available in common areas;
- forming of a multidisciplinary team;
- assessment of local needs and priorities, including training;
- identification of prisoners that have problems with drugs;
- provisions of treatment counselling and support programs; health promotion and harm reduction;
- clinical services provided by the medical service; and
- cooperation with outside institutions dealing with treatment of drug misusers.

The prison system in BiH has been facing an increased number of drug misusers in recent years. It is therefore very important to introduce a strategy for treatment of drug misusers in prisons. The aim of the strategy, among other things, is as follows:

- to ensure that every prisoner-drug misuser has an option of having discussion with a group of professionals (a physician, social worker, legal professional, psychologist) who will present him with available treatment options;
- to prevent entry of drugs into prisons;
- to establish expert groups in prisons (involving prison and external professionals), which will recommend and implement various activities in the treatment of misusers;
- to provide prisoners with a certain knowledge of drugs and available forms of treatment, and encourage them to take responsibility for their own health;
- in order to prevent infections of transmissible diseases (HIV, Hepatitis B and C, etc.), ensure that prisoners have access to services equal to those available to the community at large;
- to ensure treatment of drug misusers in prisons under the same conditions and using the same doctrines as in the community (maintenance programs, detoxification, drug free unit and other forms);
- to provide drug misuser with an option for alternative serving of sentence in therapeutic communities and other forms of treatment and social rehabilitation; and
- the strategy needs to be continually developed and updated.

- **Recommendation 4**

Hiring a certain profile of professionals to work with drug misusers in prison

It is recommended that Sectors for Execution of Criminal Sanctions within Ministries of Justice should consider options for hiring professionals of an appropriate profile who would, among other things, coordinate and implement the strategy for treatment of drug misusers in prisons.

- **Recommendation 5**

Introduce statistical processing of data
It is also necessary to introduce statistical processing of prison data concerning drug misusers and to network databases in different prisons.

- **Recommendation 6**

Involve non-governmental organizations in the work with drug misusers
Non-governmental organizations engaged in the rehabilitation programs should be involved in the work with misusers to the greatest extent possible in order to create connections and facilitate transition to freedom.

VI. CURRENT CIRCUMSTANCES UNDER WHICH DRUG MISUSERS SERVE PRISON SENTENCES IN BIH

6. 1. Legal basis

Articles 183-187 of FBiH Enforcement Law[42] define compulsory treatment of drug and alcohol addicts to be implemented in facilities that have capacity for such treatment or in a specific health care institution (Article 167). However, there is no such health care or correctional institution in FBiH, and this measure is therefore not implemented in practice.

Articles 194 and 195 of RS Enforcement Law[43] provide for a compulsory treatment of addiction in a similar way as is defined in FBiH Law. While Article 108 of RS Law provides a legal basis for testing for infectious diseases, alcohol and drugs, this basis is not sufficiently precise.

- **Recommendation. 7**

Amend Enforcement laws
Enforcement laws should be amended in line with recommendations made in this document.

6. 2. Sentence serving

There is an alarming presence of the drug issue in all prisons in BiH. On average, between 30% and 70% inmates are addicted to various types of drugs, yet little has been done in terms of treatment.

[42] Official Gazette of F BiH, No. 44/98, 42/99 and 12/09
[43] Official Gazette of RS No. 12/10

Admission of drug misuser to prison
Admission of misusers is not different from admission of other prisoners.

Accommodation
Drug misusers are placed in collective accommodation together with other prisoners.

Health care
Physician's treatment of misusers is not different from treatment of other prisoners. The misuser is examined; an adequate therapy is selected and changed as necessary. If the misuser experiences an abstinence crisis, he/she is typically sent to an external institution.

Treatment
There are no specific programs of treatment for drug misusers; rather, they are subject to an intensive individual work in terms of having more frequent discussions with them than with other prisoners.

Security measures
Prisons do not have a specific strategy for drug-related security measures. Some prisons have a plan for searches in cases of suspected drug smuggling and possession. In general, detailed searches are performed as well as checks of packages delivered or sent. Those who use external benefits are paid more attention to and are more intensively scrutinized on grounds they could attempt to bring drugs into the prison. Some prisons also use dogs trained in drug detection. In case drugs are detected, the Ministry of the Interior is notified and the drugs are handed over to the police. This is followed by disciplinary and criminal charges being filed against the inmate.

Prisons do not organize staff training; exceptionally, a few prisons organize training for security staff in drug recognition, effect of drugs, treatment of drug misusers and how to identify they are under the influence, as well as the most common hiding places for drugs. This training has been provided by the staff of the Narcotics Department with the Ministry of the Interior.

Release from prison
There is no systemic work in the area of drug misuser release. They are released from prison in the same way as any other prisoner. In some prisons the educator will have a discussion with prisoner on this subject. As necessary or on drug misuser's request, the Centre for Social Work is notified that such person is about to be released from prison and all activities of the prison end there.

VII. PROPOSED TREATMENT PROGRAMS FOR DRUG MISUSERS IN PRISONS IN BIH

7. 1. Admission to prison

The admission procedure takes place according to the admission document prepared within this project.

When admitting persons who have drug-related issues, special attention should be paid to gathering any data related to drug use, smuggling and addiction. The medical service identifies persons with difficulties and persons who require further intervention. The medical service plays a vital part in strategy implementation. During the admission stage, the treatment needs of the prisoner need to be assessed and data entered in the treatment plan.
In addition, prisons need to ensure that prisoners have access to a system of information about treatment options for drug misusers both in the prison itself, including a drug-free unit, and outside the prison in the community. This includes oral information and information distributed in hardcopy form (brochures, booklets, leaflets, etc.).

7. 2. Security measures

- **Recommendation 8**

Develop procedures to suppress entry of drugs into prisons
Within the drug combating strategy, each prison must develop a security plan and procedures to suppress entry, storing, transport and use of drugs. This plan must include any required security measures. These measures will be coordinated with other services within the prison. To this end, any required amendments to provisions of the "Regulation on the Security Service" need to be considered.

Integral parts of this plan are the following activities:

1. searches of prisoners;
2. searches of visitors and their possessions;
3. searches of any contracted members of staff (repairers, delivery workers, employees working under contract),
4. searches of packages sent to prisoners;
5. searches of accommodation;
6. searches of the zone outside living quarters;
7. searches of vehicles arriving and leaving;
8. searches of staff;
9. use of police dogs; and
10. intelligence data on drugs; gathering, processing of such data and appropriate follow-up activities.

The security plan should also pay particular attention to procedures for action in the following cases:

- if the prisoner is a suspected or declared drug misuser;

- notification and handover of substances suspected to be drugs; and
- if the prisoner is suspected of hiding substances in his/her body.

The security service must have a developed procedure for urine testing, and also for provision of assistance and support to persons experiencing an abstinence crisis to the extent this is applicable given the role of this staff.

- **Recommendation 9**

Devote attention to the risk of corruption

Attention should be paid to the staff that may be subject to and/or at risk of corruption. This is why it is necessary to have clearly defined professional and ethnical standards that will ensure clear information aimed at facilitating an investigation of those suspected of corruption.

- **Recommendation 10**

Staff training in handling of drugs

The staff must be well trained and aware of the appearance, effects and characteristics of the most common drugs. Training sessions must be held on a regular basis to keep abreast with developments in the market. The staff should also be aware of new ways of smuggling being devised. To this end, prisons network with the Ministry of the Interior. The training should also include managerial staff and all services working with drug misusers (treatment, medical, instruction).

- **Recommendation 11**

Use of Council of Europe manuals to develop security plans

Development of security plans and corresponding measures should be based on CoE manuals.[44]

- **Recommendation 12**

Training of security service staff

Security service staff must be aware of their role in the treatment of drug misusers and must be adequately trained.

7. 3. TREATMENT PROGRAMS (rehabilitation programs)

The type, scope, method and duration of treatment activities depend on several factors, including: formal-legal status of the prisoner; whether a measure of compulsory treatment was imposed; motivation; length of sentence; and capacities of the prison. This means that methods of work with drug misusers may be modified in various ways, depending on the capacities of the prison.

[44] Prison Staff Training Manual No. 1 – Core competencies for prison officers, 2005, and Prison Staff Training Manual No. 4- -Control and restraint, Contingency plan , 2008

Treatment programs may be classified into a few groups:

- **Educational programs**

These programs would cover the entire prison population and would include:
- introduction to harmful health effects of the use of drugs;
- effects of drugs;
- development of the addiction disease;
- harm reduction in drug use;
- safe use of drugs;
- aid programs available in the social community;
- relapse;
- danger of overdose; and
- spread of infection by HIV, Hepatitis, TBC and other viruses.

These programs could be implemented by medical staff and treatment service staff, as well as external contractors. They would take the form of group work and workshops, as well as individual sessions. Programs may be implemented independently or in combination with other programs. The aim of these programs is to introduce the entire prison population to the issue of drug addiction; for those using drugs, this would be the first step to become involved in motivation programs.

- **Harm reduction programs**

These programs are aimed at reducing harm resulting from drug abuse and their purpose is to ensure safe use of drugs. It is common knowledge that not all addicts are willing or capable of ceasing to use drugs at any time.

Harm reduction programs in prisons include:
- information, education and communication about HIV/AIDS, Hepatitis and other infectious diseases;
- treatment and care related to HIV/AIDS, Hepatitis and Tuberculosis, including access to the latest drugs;
- voluntary testing and counselling;
- distribution of condoms;
- cleaning and disinfectant agents, rubber latex gloves; and
- needle exchange.

These measures represent a better and more effective treatment and care for a prisoner with special needs. In addition, they are also an important element of their health care, reducing staff health risks at the same time.

This program could be implemented by the medical staff in cooperation with external institutions.

- **Substitution therapies**

- *detoxification* typical includes an individualized approach to graduate methadone reduction until a "zero" point is reached. This procedure is implemented by the medical service in cooperation with the treatment service.

- methadone maintenance program: this program generally includes prisoners who had been a part of a methadone maintenance program before coming to prison and who do not accept detoxification. A methadone maintenance program will usually not be re-introduced in a prison environment. This also applies to other forms of substitution programs.

- **Motivation programs**

Motivation is the key factor for the process of treatment of drug misusers. The degree of patient's motivation changes throughout the course of treatment, which requires knowledge of motivation techniques to increase motivation. There is internal and external motivation, and the most successful patients are those who withstand outside pressure while being motivated on the inside at the same time. It is necessary to create circumstances that will generate, improve and arouse patient's own responsibility and capacity for change. This means that motivation programs are intended to achieve internal motivation, which is teh key factor for effective change.
Motivation programs to join therapeutic communities and rehabilitation centres are significance because the path to change leads through three levels: rational, emotional and behavioural levels. These programs include five elements: recognizing the disorder; thinking about change; deciding on a change; implementing the change; and maintaining the change.

There is a whole range of motivation techniques employed in addiction treatment that have proven very effective. The basis of various techniques is a motivation interview that rests on the assumption that patients' responsibility and capacity for change lies within drug misusers themselves.

This program could be implemented by treatment service staff, either individually or in group settings. The objective is to motivate the drug misuser to accept the help offered in order to change his lifestyle, and also to motivate them to join therapeutic communities.

- **Drug free units in prisons**

1. Goals and tasks

The essence of this treatment program is that it is voluntary and that drug misuser shows willingness and motivation to abstain from drug use, as confirmed through education and motivation programs.

Therefore, the program is designed to provide a strong support to misusers in implementing their own decision.

The drug free unit offers a safe area for drug misusers to support their abstinence and lifestyle change efforts. Their personal part is, first and foremost, to accept the offer of monitoring and addiction treatment, while external control is reflected primarily in compulsory tests for drugs.
The effectiveness of this program can be measured by the degree of preparation of a drug misuser to joint therapeutic communities and rehabilitation centres following release from prison.

2. Structure of the drug free unit and a set of treatment measures

Admission to the drug free unit

In principle, the prisoner himself makes the request to be admitted to the drug free unit (hereinafter: the unit), and the admission is decided by the unit's expert team. At a session, the expert team decides on areas of focus in the monitoring and treatment of the prisoner staying in the unit, which includes prisoner's participation.

The admission procedure for the drug free unit includes a triage based on the admission document developed within this project. The triage is carried out in the admission unit.

Following this part, the expert team defines unit admission criteria:

- willingness and motivation of the prisoner to access this program (successful completion of the education and motivation programs), and acceptance of the drug free unit program;
- the prisoner is at an abstinence stage, as confirmed by urine test results at least one month before admission;
- an assessment is made as to whether the particular person is suitable for accommodation in the unit and group;
- the prisoner must not be subject to either general or special security measures;
- any court or disciplinary procedures involving the prisoner must be completed; and
- there is an option for release from prison following completion of the program and for joining community-based programs.

Before being admitted to the unit, the drug misuser signs a therapy agreement, accepting the treatment program, unit rules and his own program of work, since an individual work plan is developed for each drug misuser.

During the stay in the drug free unit, the prisoner commits to the following:

- not to use any psychoactive medications, illicit drugs or alcohol;
- not to possess, bring, mediate in bringing or procuring, resell or enable use of illicit drugs;
- to be ready at all times to undergo urine testing; any refusal or avoidance of testing will constitute an admission to taking drugs;
- to accept that urine samples for testing purposes will always be given in the presence of a medical technician and a member of the security service;

- to learn about difficulties accompanying the addiction disease and about ways to help them;
- to regularly attend group meetings and actively participate in all activities provided for in his individual treatment plan;
- to spend his free time actively and beneficially;
- not to be violent toward himself or others;
- not to receive visits by prisoners from other units; and
- to be conscientious in meeting his work and other duties.

These commitments must be described in more detail in an appropriate document, which will also provide for consequences of a failure to meet these commitments. It will also state obligations of the unit's expert team, and the medical, treatment and security services.

There are no external benefits during the stay in the unit, and visits are carefully planned: who, how long, when and in what way (possibly visits behind glass).
An integral part of work in the unit is working with the family and relatives. In addition, the program includes intensive preparation for the period following release from prison. The prisoner can make telephone calls from the unit's telephone booth on a daily basis.

Duration of treatment in the unit

Individual access to the program is limited in time to a period of one year.

Accommodation conditions and capacities

Experience has shown that addiction treatment is inefficient in circumstances where access to drugs is allowed. For this reason, the unit where the treatment is implemented must be physically separate from other units as a separate unit. In principle, accommodation should include single rooms, own bathroom (if there are no bathrooms and toilets in rooms) and a toilet, with a dining room and other common rooms required for program implementation (a room for urine sample taking; a room for group work, leisure activities, workshops). By being transferred to the unit, the drug misuser is thus isolated from the general prison population.

The unit capacity should not exceed 15 persons.
The unit shall have its own daily and weekly schedule of activities and a clear code of conduct.

Daily schedule of activities in the unit

Drug misuser takes part in the regime, i.e. daily life, of the prison (work, leisure, meals, hygiene, night rest, etc.); however, as already mentioned, they will do so separately from the rest of the prison population.

To ensure thorough preparation for treatment, medical and therapy preparation measures need to be implemented. The focus would be on work

in a therapeutic community and therapeutic groups, aimed at understanding behaviour patterns and causes of drug use, and at developing a different lifestyle. Through all forms of work in the unit, drug misusers are able to resolve their problems, acquire and develop self-respect, learn social skills and take responsibility.

Forms of work:

- ❖ Group meetings in the unit

Meetings are organized once per week and last between 45 minutes and one hour. These meetings reflect the daily coexistence and serve to plan and organize joint actions. Attendance at these meetings is compulsory for group members.

- ❖ Treatment and monitoring groups

During one free afternoon every week, a group activity is offered within the group in the unit (e.g. a psychosocial discussion group or a sports group). During this afternoon, various content is offered intended for group activity. Attendance at these meetings is compulsory for group members.

- ❖ Individual work

A discussion is held with each group member in the unit as necessary, at least every 14 days. This discussion will reflect addict's behaviour and conduct in the group, in his workplace, as well as his personal organization of free time.

- ❖ Meetings of the therapeutic community

Persons staying in the unit and the unit management and staff shall hold a therapeutic community meeting once per month. Participation in this meeting is compulsory.

This meeting serves group members as a forum to express their personal needs and issues that concern the group. This type of meeting should be used to find adequate solutions for any issues that are identified in this way.

- ❖ Work

To make sure that group members have busy and organized days to the extent possible, a full-time work arrangement should be organized for persons in the unit.

If a person is not fit for work, occupational therapy may be used.

- ❖ Leisure time

Leisure time has a special significance. To provide new orientations in organizing one's free time, prisoners are required to participate in group

meetings during periods when they are not at work, in common sports and group events and in discussions with the prison staff.

- Other meetings

Other meetings that are encouraged are informative meetings with therapeutic or other institutions; health checks performed by staff physicians or hired specialists; as well as other activities arising from community life; group members largely prepare these meetings and are in charge of monitoring them (in terms of analyzing these meetings).

- Counselling and education

Members need education about relapse, errors, stress, smoking, healthy diet, positive attitude towards own body, alcohol abuse, first aid, healthy sexual relationships, the importance of sports, etc. At release from prison, we should never forget counselling in case the same mistake is made or drug use is resumed.

- Testing for drugs – urine tests

A program needs to be introduced for a prescribed, compulsory testing for drugs in the unit, to be implemented at physician's discretion, periodically and without announcement. Urine sample taking and refusal to do so must be defined under the Enforcement law.

Daily and weekly schedules need to be developed; they must be very clearly structured and quite clear to everyone staying or working in the unit, and they also must be posted on the bulletin board and in other rooms in the unit.

Advantages and benefits of staying in the unit

What could motivate prisoners to joint the program is the possibility of a conditional release from prison or of a interruption of sentence and referral for treatment outside the prison. In case of successful treatment, the length of stay is counted as part of the prison term served. In case the treatment is unsuccessful, the prisoner returns to the prison, which needs to be defined under legislative amendments mentioned earlier.

The prisoner placed in the unit enjoys certain benefits: the option of intensive treatment depending on the program; the person is removed from the risk environment; the person enjoys better accommodation and is able to make unlimited phone calls on a daily basis; as well as any other predefined benefits in the unit.

Transfers in case of dropping out of the program or relapse

Disruption of abstinence is not a reason to automatically remove the prisoner from the unit, thereby exempting him from the treatment program. In light of experience with persons that were identified as having a relapse, i.e. the possibility of resuming the use of drugs, giving consideration to this person's return may have a decisive influence on further treatment of his addiction issue.

At any rate, however, a relapse should not remain without any consequences on an individual sentence serving plan. The scope of consequences to be faced by the prisoner needs to be decided as part of decisions taken on individual cases by the treatment team. Before this is done, the extent of prisoner's desire for abstinence and for further work on his personal recovery needs to be discussed.

Changes to the treatment program

The treatment program for a prisoner shall be changed according to an assessment of his behaviour, the degree of his cooperation in implementing the program; the results achieved and any developments during the prison term. Program implementation is reviewed every three months.
The program is changed according to the same procedure used for its development.

Release from the unit

A prisoner's stay in the unit will terminate in the following cases:

- when the prisoner completes the program;
- on prisoner's request; and
- when the prisoner violates accepted rules.

The prison director decides on a termination of stay in the unit based on a recommendation of the unit's expert team.

7. 4. Cooperation with external institutions

A possibility of transfer for treatment outside the prison would directly depend on the course and effects of treatment and options for placement in an inpatient therapy institution (communes, non-governmental organizations, etc.). It is important to note here the significance of networking with community-based addiction treatment programs.

It is necessary to maintain good cooperation with external institutions, in particular with centres, so that they can assume some form of sponsorship role over the prison located in their area. Cooperation is also necessary with non-governmental organizations, which should also have access to prisons.

7. 5. Staffing resources

- Multidisciplinary team

Various staff categories need to be involved in the work with drug misusers. It is important that their work should be mutually coordinated at prison level, and that they should be working in close cooperation. The team includes:

- head of unit;
- treatment service (educator, psychologist, social worker);
- security service;
- medical service; and
- workshop-instructors service.

Considering the suggested size of the unit, this team will also do their other routine tasks in the prison in their specific areas.

- **Treatment service**

The educator, psychologist and social worker, members of the treatment service who perform counselling and treatment duties in the unit, must undergo training in treatment of drug misusers. The treatment service will document its treatment work.

1. Treatment monitoring measures

Based on experience with misusers who terminated their treatment and were returned to their prisons to serve sentence, and based on different feedback from institutions for implementation of addiction therapy, attempts at therapy often fail because of insufficient preparation of persons being transferred to therapy implementing institutions. The aim of counselling and monitoring a person is to form an attitude that includes restraint from drug use (abstinence from drugs) and to support such attitude, and also to develop skills and gain knowledge required for a successful start of therapy.

In addition to group work implemented by treatment staff, additional support and improvement of social skills are provided through weekly group sessions – with the participation of a psychologist if necessary – as well as regular individual discussions.

Individual discussions

Individual discussions with the prisoner lead to individual solutions in the psycho-social area. Discussion dates are decided on an individual basis.

Group work

Within group sessions, efforts should be made to motivate drug misusers to overcome their fears and to face their life history, drug addiction, current situation and their future life. They should be given an opportunity to practice behaviour patterns underpinning group life and to develop abilities in this area

(e.g. the ability to establish contact and relationship, to overcome conflicts and criticism) that are required for therapy.

2. Discussions with family members

As a rule, addiction goes hand in hand with diminished ability to build interpersonal relations. For treatment to be effective, it is also necessary to establish and maintain ties to the outside world, in particular to family members and partners.

It is often the case that family members and drug misusers – due to sympathy, feeling of guilt, need for help and control – have identified with their roles that are mutually reinforcing in a negative way. It is particularly difficult for parents or partners to restrain and overcome the gap that may be developing.

Through joint discussions with family members and addicts, efforts should be made to encourage and guide them to start changing their behaviour.

3. Contact with applicants (drug misusers who wish to be placed in the unit)

Drug misusers interested in being placed in the unit will receive information through promotional materials and possibly through an informative discussion and interview about the methods of work in the unit. Admission applications are prepared by the treatment service, while the conference (team meeting) will decide on admission.

4. Support for participation in the implementation of therapeutic addiction

treatment

Duties and tasks of the treatment service stress the support provided by various institutions in implementing addiction treatment. This includes selecting and contacting a suitable outpatient station or an inpatient therapy institution. Institutions are selected and contacted taking into account individual resources and needs of every individual.

- **Security service**

This service performs security duties: secures the unit and rooms where drug misusers live and work; enforces security-related provisions of unit's house rules; and performs any other duties related to general or personal safety.
In addition, members of this service participate in group meetings in the unit to discuss prisoners' conduct at work, in the unit and in free time, and are also involved in other activities as necessary.

Members of the security service working in this unit must be trained in working with drug misusers.

- **Medical service**

The medical service is responsible not only for monitoring the health status of prisoners, but also for establishing such conditions in medical terms that will

promote the well-being of both the prisoners and the staff, and is also responsible for conducting regular testing for drugs.
Orders to perform testing for drugs are recorded separately. Laboratory test results, if findings are positive, are first provided to the prison physician so that he can verify whether such positive finding is the result of a medical treatment.

In addition, two times per year prisoners are generally informed about health effects of drug use.

Health status information will be forwarded to the monitoring team if the person signed a written statement before admission releasing the prison physician from the obligation of confidentiality.

- **Workshop instructors service**

Since all those involved in the program must either work full-time or be in occupational therapy, work instructors that work with them must be trained in working with drug misusers. They also need to participate in group meetings in the unit.

- Staff training

Effective implementation of the program and strategy for working with drug misusers depends on well trained staff that is motivated and likes this work. Staff training is an integral part of program implementation.

It is also important that all prison staff working with drug misusers receive basic information and findings about harmful effects of drug abuse, and also about basics of working with misusers.

Integral parts of staff training are program evaluation, information about the course of program implementation, as well as monitoring of program effectiveness and effects.

- Supervision

Those implementing programs in prisons must be supervised by an external professional.

7. 6. Release from prison

Preparation for release from prison is extremely important for all prisoners, in particular for drug misusers. Preparation programs include, among other things, self-control training, drug use and fitness for work, as well as employment options, leisure activities and lifestyle – in other words, all subjects that are highly relevant for them.

In addition, the prison networks with other institutions in the community that continues working with drug misusers. Continuity in work is very important and includes assistance following release from prison.

7. 7. Financial, material and staffing requirements

To implement these programs, certain financial resources need to be secured (continuous supply of latex gloves, disinfectants, urine tests, etc., professional literature, initial and additional training for staff and prisoners), as well as material conditions to arrange rooms for urine tests, to set-up drug free units and to ensure the staff needed to implement programs.

7. 8 Program evaluation and research

Programs being implemented must be evaluated in terms of their effectiveness, in cooperation with research institutions. In this respect, it is important to introduce information technologies in data gathering, processing and provision.

VIII. SUMMARY

The number of prisoners associated with drugs is on an increase. This necessitates organization and implementation of treatment and programs for drug misusers in prisons in BiH. This document presents a range of options that may be modified considering the spatial and staffing capacities in different prisons.

It is therefore recommended that strategy development should also include modifications that could be applied in different prisons, as well as differential programs for treatment of different groups of prisoners. It is recommended to select one prison to implement a pilot project and review lessons learned.

There is a need for continuing education of the staff about the addiction issue and treatment programs available.

Drug misusers must work hard, reflecting on their own being and learning a lot about themselves and their relations with other people. They will often find this displeasing; the path is long and often painful; however, well-motivated drug misusers can make it and dig their way out of the hell of drugs.

IX. Appendix
Schematic outline of the program

Council of Europe
Conseil de l'Europe

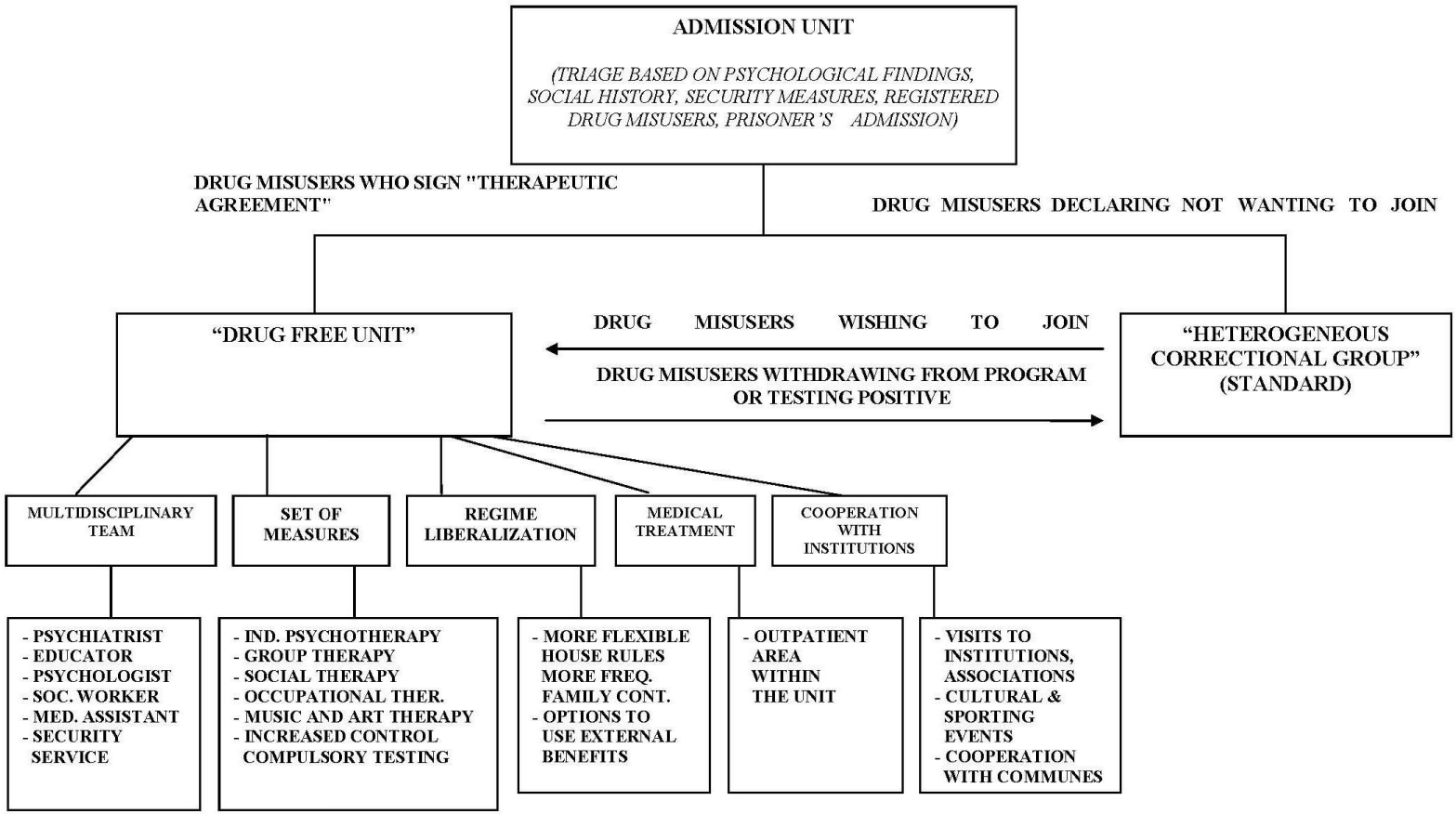
European Union
Union européenne

Joint Project between
the European Union and the Council of Europe

"Efficient Prison Management in Bosnia and Herzegovina"

III. IMPROVING THE SITUATION OF VULNERABLE AND HIGH-RISK PRISONERS

Schematic outline of the program


ADMISSION UNIT
(TRIAGE BASED ON PSYCHOLOGICAL FINDINGS, SOCIAL HISTORY, SECURITY MEASURES, REGISTERED DRUG MISUSERS, PRISONER'S ADMISSION)
DRUG MISUSERS WHO SIGN "THERAPEUTIC AGREEMENT"
DRUG MISUSERS DECLARING NOT WANTING TO JOIN
"DRUG FREE UNIT"
DRUG MISUSERS WISHING TO JOIN
DRUG MISUSERS WITHDRAWING FROM PROGRAM OR TESTING POSITIVE
"HETEROGENEOUS CORRECTIONAL GROUP" (STANDARD)
MULTIDISCIPLINARY TEAM
SET OF MEASURES
REGIME LIBERALIZATION
MEDICAL TREATMENT
COOPERATION WITH INSTITUTIONS
- PSYCHIATRIST
- EDUCATOR
- PSYCHOLOGIST
- SOC. WORKER
- MED. ASSISTANT
- SECURITY SERVICE
- IND. PSYCHOTHERAPY
- GROUP THERAPY
- SOCIAL THERAPY
- OCCUPATIONAL THER.
- MUSIC AND ART THERAPY
- INCREASED CONTROL COMPULSORY TESTING
- MORE FLEXIBLE HOUSE RULES MORE FREQ. FAMILY CONT.
- OPTIONS TO USE EXTERNAL BENEFITS
- OUTPATIENT AREA WITHIN THE UNIT
- VISITS TO INSTITUTIONS, ASSOCIATIONS
- CULTURAL & SPORTING EVENTS
- COOPERATION WITH COMMUNES

Council of Europe
Conseil de l'Europe

European Union
Union européenne

Joint Project between
the European Union and the Council of Europe

"Efficient Prison Management in Bosnia and Herzegovina"

III. IMPROVING THE SITUATION OF VULNERABLE AND HIGH-RISK PRISONERS

GUIDELINES AND TREATMENT PROGRAMMES FOR SEX OFFENDERS IN PRISONS IN BOSNIA AND HERZEGOVINA (4)

Sarajevo, April 2010

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"Guidelines and treatment programs for sex offenders in prisons in Bosnia and Herzegovina" is the final document of the project.

CONTENTS

I. INTRODUCTION

Sex offenders do not make up a significant percentage of the current total number of prisoners in Bosnia and Herzegovina (hereinafter: BiH). However, careful analysis of the consequences and social threat caused by these offenders and the problems facing their victims require caution by all social factors dealing with this problem, and especially institutions such as centres for social work, specialised healthcare institutions, courts, the police and prisons.

In line with results of national and scholarly research, if we want to seriously respond to this sort of social phenomenon, it is particularly important to establish systematic teamwork of all social subjects dealing with this problem, both in terms of causes and in terms of consequences.

Without neglecting the important role and significance of other social institutions, we will focus on how this category of prisoners is treated in the process of serving their prison sentences and what methods and specialised approaches are applied to them. Apart from that, we will also be addressing the level of risk and the needs of this prisoner category in order to develop complete and comprehensive plans and programmes for specialised treatment and surveillance that will have the most impact on their readiness to return to the social environment where they live.

When preparing, developing and implementing programmes for sex offenders, it is important to have developed guidelines for implementing programmes in prisons usually prepared by the prison administrations (state or entity level) in cooperation with experts from various organisations in the community, as well as the ministry of justice and other relevant ministries. In essence, this is a strategic document for activities conducted in this area.

Such a document should include, among other things:

- basic principles of work,
- standards for those implementing the programme, including guidelines for risk assessment, treatment objectives, programme intensity, mode of treatment, assessment and research,
- preparation for release,
- participation of external organisations,
- release from prison.

The document you are reading is an attempt to develop a proposal for treatment of sex offenders in BiH.

II. TREATMENT OF SEX OFFENDERS IN PRISONS IN EUROPEAN COUNTRIES

In most European countries, the number of sex offenders in prisons is on the rise, and their percentage within the prison population ranges from 4% to 17%. This is due to the fact that longer sentences are applicable to sex offences. The prison sentence is

sometimes accompanied by a measure of obligatory treatment to be conducted in the appropriate institutions.
Research indicates that the most appropriate method of treatment is based on the cognitive-behavioural model that includes a strategy to prevent recurrences of sexual violence. It is also important that the programmes in the prison are connected to release preparations, assistance provided after the sentence is served and the possibility of continuing treatment in the community.

The programmes that have become widespread in Western democracies in the past 10 years have adopted an approach called "cognitive-behavioural/relapse prevention" developed in North America. Some European countries adopted these programmes and adapted them to the specific conditions within their prison systems. Other countries developed their own programmes in cooperation with experts in the community. Such programmes are used in England and Wales, Scotland, Ireland, Sweden, German, the Netherlands, France and some other countries.

Treatment begins with a comprehensive assessment that includes psychological testing, clinical interviews and other techniques to define treatment objectives and strategies for each individual sex offender. The causes behind the offences from the past are also examined, and all of this together helps define attitudes, thoughts and behaviour patterns that are needed and that can reduce the risk of re-offending. The treatment includes both group and individual therapy.

SOME BASIC FACTS ABOUT IMPLEMENTING TREATMENT PROGRAMMES FOR SEX OFFENDERS IN PRISONS

1. Who they are?

All kinds of people commit sex crimes. Such behaviour is not unique to any one social, economic, or racial group. On the surface, sex offenders often look and act very "ordinary." Many have stable employment, a social support group of family and friends, and no criminal record. Some are prominent members of the community, successful business owners, or active in community and charity events.

Underneath however, individuals who commit sexually deviant acts may do so in reaction to a complex set of psychological factors, emotional traits, and environmental conditions. These include stress, anger, lack of power and self-esteem, deviant sexual fantasies and attitudes, substance abuse, psychosis, lack of empathy, peer pressure, cognitive distortions, environmental opportunity, pathology, and the attributes of the victim.

As such, there is no single "profile" of a sex offender. However, there are certain characteristics and behaviour patterns that are associated with many sex offenders.

2. Denial, Rationalization, and Other Characteristics of Sex Offenders

Most sex offenders exhibit denial, a form of cognitive distortion that reduces an individual's sense of responsibility for the deviant behaviour. If they recognized the

severity of what they were about to do and the harm they would cause, some offenders would restrain themselves.

Denial is an important issue that must be continually addressed throughout therapy and supervision. There are many forms of denial, including denial of

- the offense ("I didn't do it");
- the sexual intent ("I was only trying to teach her about body parts");
- responsibility ("I was drunk");
- harm ("I touched her but didn't rape her");
- sexual gratification ("I only did it because she asked me to");
- sexual arousal ("I performed oral sex on him but never got aroused");
- planning ("It sort of just happened");
- extent or magnitude of the abuse ("In my seven years as Cub Scout leader, I have only touched two boys"); and
- likelihood of re-occurrence ("It won't happen again, I have found the Lord.")

Other characteristics associated with sex offenders are secrecy, manipulation, grooming (progressively building trust and dis inhibiting resistance to sexual contact), and an inability to empathize with the harm they cause their victims. Most sex offenders know that their behaviour is illegal or looked upon unfavourably by society. Some feel shame and guilt for what they do. They often manipulate others to obtain victims or hide their behaviour.

As such, sex offenders are adept at lying and covering up their activities. Sometimes these offenders are very successful at convincing friends, family (even untrained officers and treatment providers) that they are not "sex offenders."

Sex offenders may also suffer from cognitive distortions. Cognitive distortions are thoughts and attitudes which allow a sexual abuser to minimize, justify, and rationalize deviant behaviour, as well as reduce guilt and feelings of responsibility for the behaviour. Cognitive distortions allow sex offenders to overcome inhibitions and ultimately progress from fantasy to behaviour.

Deviant sexual fantasies in which offenders touch themselves and fantasize about what they will do to their victims play a central role in sexual offending. In some cases offenders are not even aware that their fantasies are deviant; they have been having them for such a long time that they consider them normal. Often, disclosure during therapy is the first time an offender begins making a connection between their fantasies and their sexually deviant behaviour.

3. Sex Offender Treatment

Sexual deviance is treatable. The key word in sex offender treatment is not "cure" but "self-control." Through treatment, offenders can learn to manage their abusive behaviour and minimize the risk of reoffending. Treatment for sex offenders is similar to treating others with addictive and compulsive patterns of behaviour.

Just as an addict learns to maintain a drug-free lifestyle, sex offenders can learn to control, if not eradicate, their deviant interests and behaviour. For treatment to work,

the offender must be an active participant in identifying risky behaviour and in developing coping strategies to address them.
Offenders are solely responsible for controlling their sexually deviant impulses. If they choose to remain in denial or refuse to engage in treatment to reduce their deviant interests, they are a high risk to re-engage in sexually deviant behaviours.

4. Treatment Goals

Effective treatment depends on thoroughly evaluating the offender, developing cognitive and behavioural treatment strategies tailored to the offender and the offense, and establishing specific and measurable goals.

Treatment goals generally include teaching the offender to accept responsibility for and modify cognitive distortions, develop victim empathy, understand the complexity of his or her arousal pattern, identify the behaviours that precede the sexually abusive behaviour, develop relapse prevention skills, and control sexual arousal and deviant sexual behaviour. Effective treatment regimes also help the offender enhance self esteem and self-understanding, improve communication and social skills, increase problem solving and coping skills, and develop healthy adult sexual relationships.

5. Treatment Techniques

The most effective treatment programmes combine behavioural cognitive approaches with aversion conditioning, skills training, cognitive restructuring, and relapse prevention. These therapies are often supplemented with family therapy, drug or alcohol treatment, marital therapy, and individual crisis intervention.

Most sex offender treatment professionals recommend group therapy, as opposed to individual therapy. Sex offender treatment programmes are confrontational and intrusive and differ from other mental health treatment programs in several ways.

In cases where the sex offender suffers from deviant sexual fantasies affecting his concentration and mental stability, it is necessary to consult with a neuro-psychiatrist and introduce the appropriate pharmacological therapy. For such offenders, this is a primary and crucial moment that will show whether following a treatment programme, the offender will be able to join the planned therapy programmes.

6. Risk Assessment

Risk assessment and the assessment of the prisoner's readiness to undergo treatment should be viewed as a process and continuous practice. Risk assessment is about assessing the overall risk of re-offending. Risk assessment is a key component in managing sex offenders because it helps prison officers define plans and conditions of supervision/surveillance. Risk assessment is a dynamic process conducted in various phases both during admission to prison, during the serving of the sentence and during preparations for release.

7. When is the best time to provide programs?

There is some debate regarding the best time to provide sex offender treatment programmes. Some suggest treatment should occur just prior to release into the community. Others suggest that treatment should occur at the earliest opportunity in order to capitalize on motivation and on a more vivid recollection of the offence and its impact on all those affected by it. Often the timing of treatment is related to availability of treatment services.

8. Program intensity

High intensity

Programmes are recommended for offenders assessed as higher risk to reoffend and/or high need. These programmes are usually delivered in specialized unit.

High needs offenders need more time to reach acceptable levels of functioning for each of the targets of treatment, and they will almost certainly need programming additional to sexual offender specific treatment (e.g., cognitive skills, living without violence, substance abuse)

Moderate intensity

Programmes are recommended for offenders assessed as moderate risk with need levels that are either moderate or high.

Moderate intensity programmes may be located in institutions of varying security levels.

Low intensity

Programs are recommended for low risk offenders
These programs are usually located in minimum security facilities

Maintenance programmes

Should be available for all treated sex offenders.

Other programmes

Programmes which target thinking styles, impulsivity, educational upgrading, employment skills, alcohol and drug abuse, as well as family violence, could be provided while the higher risk sex offender is awaiting specialized treatment. These programmes could prepare the offender by addressing general therapeutic issues such as group processes, confidentiality, trust, openness, and by exposing offenders to specific strategies such as video-taping. Introduction to learning principles such as competing behaviours, immediacy of reinforcement, generalization, and cognitive mediators can be transferred from one treatment programme to another, and should reduce the time required to address these issues early in the group process.

9. The role of staff in effective programme delivery

Staff is considered to represent an important resource that, when well managed by prison administration, can enhance treatment practices and results. The role of staff in the rehabilitation process is very important.
Their selection, training, support and retention are as important to effective rehabilitation as the choice of assessment instruments, programming modules, and supervision strategies. This is a synergistic relationship; good staff (skills, knowledge, characteristics) enhances good programmes.

10. Research and Evaluation

There is a strict procedure for gathering, forwarding and exchanging data with all judicial bodies. Sex offenders also have the right to access all or some of the information from their files.

Research is conducted by special research department within the prison administration. Every step in the treatment of sex offenders is monitored and evaluated so as to ensure that best practice is being applied.

11. Treatment programmes in the Community

The ideal is that there should be a 'seamless' transition from prison to community. These programmes are intended for persons under probation, as well as those released from prison and under probationary supervision.

12. Problems

For all sex offenders, management difficulties may arise in the course of treatment. These may include refusal to participate, breaking confidentiality, or disruptiveness during groups. All efforts should be made to engage the offender in the treatment process, but if individual counselling, peer confrontation, or, as a last resort, behavioural contracting, is ineffective, the group needs should take precedence over the individual. Removal from therapy may be necessary in persistently disruptive or otherwise problematic cases. Some programmes adopt the tactic of removing clients from a group context and offering individual treatment to reduce the threat, or fear, of discussing issues before a large audience.

Treatment effectiveness should be in connection with early release from the prison.

Sex offenders should be aware that refusal to enter, or withdrawal, from treatment is both likely to result in parole denial.

III. COUNCIL OF EUROPE RECOMMENDATIONS AND CPT STANDARDS[45]

The European Prison Rules[46] (hereinafter: EPR) do not mention special programmes for special categories, but generally state that the regime applied to prisoners must offer a balanced programme of activities to facilitate a responsible life without criminal behaviour and to promote the development of personal responsibility. The Rules also talk about a sentence serving plan that is to include programmes to satisfy the needs of prisoners and to help them overcome their difficulties and train them for live. This includes conducting a wide range of various treatment programmes including a programme for sex offenders.

Also, the CPT stresses the importance of overall quality of life in a prison. This quality depends on the activities offered to prisoners and on the general state of relations between the prisoners and the staff. A satisfactory programme of activities is crucial for the welfare of prisoners.

In brief, we can say that considerable attention is given to measures and programmes that develop individual responsibility and help enable the prisoner to lead a responsible life without crime once he has served his sentence.

IV. CURRENT CIRCUMSTANCES RELATED TO THE TREATMENT OF SEX OFFENDERS IN BIH

Based on all relevant data, we can conclude that to date, no single official institution, non-governmental organisation or association has been registered in BiH to deal with this problem in an organised manner or to focus on scientific research related to these issues.

There are also no individual scientific research papers, analyses or programmes related to this category of prisoners.

The treatment of this category of prisoners in BiH prisons have not differed very much in terms of planning and implementation from treatments for other categories of prisoners. One reason is certainly the fact that the percentage of sex offenders out of the total number of prisoners has been low as confirmed by statistics from the three largest prisons, the one in Zenica (7%), Foča (4%) and Banja Luka (5%).

Legal Frameworks and Definition

For the purposes of this document, a sex offender is defined as a person who committed a criminal act defined in Chapter 19 of the Criminal Code of FBiH and RS[47]:

[45] The most important parts of the General Reports of the European Committe for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf/E (2020)1 – Rev. 2006
[46] Recommendation REC (2006)2
[47] Official Gazette of RS No. 49/03, 108/04, 37/06 and 70/06
[47] Official Gazette of FBiH No. 36/03, 37/03, 21/04, 69/04 and 18/05

- rape (Art. 203 CC FBiH, 193 CC RS),
- sexual intercourse with a helpless person (Art. 204 CC FBiH, 194 CC RS),
- sexual intercourse through abuse of position of authority (Art. 205 CC FBiH, 196 CC RS),
- forced sexual intercourse (Art. 206 CC FBiH),
- sexual intercourse with a child (Art. 207 CC FBiH, 195 CC RS),
- lewd conduct (Art. 208 CC FBiH, 197 CC RS),
- lewd conduct in front of a child or minor (Art. 209 CC FBiH, 197 CC RS),
- incitement to prostitution (Art. 210 CC FBiH, 198 CC RS),
- abuse of a child or minor for pornographic purposes (Art. 211 CC FBiH, 199 CC RS),
- introducing a child to pornographic material (Art. 212 CC FBiH, 200 CC RS),
- incest (Art. 213 CC FBiH, 201 CC RS).

Many of these are serious criminal acts and a sentence of up to 15 years in prison is applicable to them.

Sex offenders serve sentences in various prisons.

V. PROPOSED TREATMENT PROGRAMMES FOR SEX OFFENDERS IN PRISONS IN BIH

5.1. Admission and Treatment Plan

The admission procedure stipulated by law shall be based on the admission document developed by this project. It should be noted that an individual treatment plan includes continuous interventions required by a sex offender in view of the assessed degree of risk he poses and his special needs.

Apart from that, it is necessary to introduce additional procedures for sex offenders that will help develop individual treatment plans. These procedures include:

Questions Pertaining to the Sexual Offense

1. Where did the assault take place? Was the location selected randomly, or is the location always the same?
2. Describe in detail how you selected the victim. Were there certain characteristics about the victim that appealed to you (e.g. age, sex, physical appearance)?
3. What was the victim's reaction? Did the victim say anything, cry, submit, or fight back during the assault? Did you stop at any time during the assault because of the victim's reaction?
4. If the victim was a child, how did you know the child would cooperate? What made you think the child wouldn't tell?
5. What were you thinking and feeling during the abuse? Were you aroused during the assault? If so, what was arousing to you?
6. What did you say to the victim during the offense? Did you ask or threaten the victim not to say anything after the assault?

7. To what extent were drugs or alcohol used? Were they used to lure the victim, to reduce the
victim's reaction, or to reduce your own inhibitions before the offense?
8. Did you use a weapon during the assault? If so, how was it used?
9. Have you ever tried to stop the abusive behaviour? How?

Questions Pertaining to the Offender's Sexual History

1. How did you first learn about sex? What did your parents tell you about sex?
2. How often do you masturbate? How old were you when you started to masturbate? What did your parents tell you about masturbation?
3. What do you think about when you masturbate? What are your fantasies? Have they changed over time?
4. When did you start to date? Describe your first sexual experience.
5. Describe your relationship patterns with adults.
6. Describe your sexual relationships with your spouse/significant other?
How often do you engage in sexual activity? Who initiates sex in the relationship?
7. Have you ever been a victim of sexual abuse? What is the first childhood sexual experience you recall? Have you ever been scared or humiliated sexually?
8. Have you ever peeped in windows? Exposed yourself? Made obscene phone calls? Rubbed up against another person in public for sexual pleasure?
9. How old were you when the sexual difficulties began? How has your sexual deviancy affected your life (e.g., employment, school, family, health)?

Assessing Risk

Risk assessment is a crucial component in the management of sex offenders because it helps prison officers determine supervision plans and conditions.

In addition, advises focusing the assessment on the following five factors.
• What is the probability of reoffense? Examine the offender's similarity to other types of sex offenders, including offense type, multiple paraphilias, degree of force, criminal lifestyle, and deviant sexual arousal.
• What degree of harm would most likely result from a reoffense? Examine the offender's use of force and propensity for violence. If there is no history of violent behaviour, review the offender's pattern of past offenses for an increase in intrusiveness or threats of violence.
• What are the conditions under which a reoffense is most likely to occur? Consider the offender's access to victims, use of alcohol or drugs, use of sexually stimulating material, employment and residence, access to an automobile and emotional state.
• Who would be the most likely victims of a reoffense? Review the offender's selection of past victims. Use the plethysmograph and polygraph (when appropriate) to determine other potential victims.
• When is a reoffense most likely to occur? Analyze the offender's pattern of past offenses and examine the day, season, offender age, and reoffense patterns associated with other sex offenders.

5.2. Staff

Programmes could be conducted by the treatment service staff who received additional training in sexual disorders and sex offenders and who would be working in pairs. It is recommended that one staff member in this team should be a psychologist. Apart from initial training, continuous training must be conducted to enable the staff to keep up to date with new developments in terms of treatment possibilities.

Other categories of staff should also be appropriately trained. The security service staff must be familiar with the ways of working with sex offenders and with their own role in the programme. Since these officers are in constant contact with the prisoners, they can be of more help if they possess the necessary knowledge.

Apart from that, it is necessary to organise training for prison administrators so that their staff can be informed about the benefits of such programmes conducted in prisons, as well as other rehabilitation programmes conducted in prisons.

5.3. PROPOSED TREATMENT PROGRAMME FOR SEX OFFENDERS TO BE APPLIED IN PRISONS IN BIH

When it comes to introducing a programme for sex offenders in prisons, as well as additional programmes, it is also necessary to establish a culture and organisation in the prison that will complement and support the treatment programmes and needs, including preparations for release from prison. This is certainly no easy task and much depends on the administration, policy and operative procedures enabling staff to promote such a culture. This would include:

- appropriate programmes,
- specialised staff training,
- special attention devoted to visits and other contacts,
- restricted access to pornographic literature,
- recognising potential signs of violence in sex offenders,
- preparation for release and release, and
- reintegration into society.

The prison should also have close cooperation with institutions in the community that deal with sex offenders, because ultimately all sex offenders return to the community.

The implementation of the programme requires a multidisciplinary team comprising a psychologist, educator, social worker and member of the security service.

Programmes must be carefully prepared and planned, assisted by appropriate staffing structures and have general support. Apart from that, they also must be evaluated.

5.3.1. Preparations for Group Therapy – Motivation Phase – Motivation Group

In the initial phase of the prison sentence, sex offenders should join a preparatory group that could be called a motivation group. These groups are very effective in supporting and encouraging a desire to change. The intention is for participants to see and realise the potential advantages of their participation in group therapy.

This programme would be simplified and adapted to the intellectual and educational level of each prisoner so that all of them can understand, accept and actively participate in it. In effect, this means that the programme would not only be therapeutic, but also educational. These motivation groups would be experimental and would serve as a form of triage (selection) for the second phase of therapeutic work. In other words, initially, information would be given on therapeutic possibilities, myths about therapeutic programmes would be done away with and guidelines would be provided for how best to prepare for treatment and for joining group therapy.

Then, work would be done on motivation, where participants would explore what changes they need to make in their lives and how to make them. The group would also help build and improve self-respect and self-sufficiency through sharing experiences.

Implementer

- Educator or psychologist or social worker

Group

- sex offenders regardless of risk level, psychopathology and whether they admit to having committed a crime or not.
- 10 to 12 participants
- once a week for 2 hours
- Duration: at least three months (the duration depends on readiness to join the next phase of treatment).

Objective
Admits to the crime
Wants to make progress
Motivation to join group therapy

This type of programme would be conducted in all prisons where there are sex offenders.

A list of resources on sexuality would be complied to help in the implementation of the programme.

5.3.2. Individual Programme

In prisons with individual cases, activities would be conducted individually to motivate and prepare the sex offender for group therapy.

- Individual activities should be started as soon as possible, and they will often help the prisoner to become accustomed to prison, which is useful since sex offenders

usually serve longer sentences. They should be encouraged to make changes through individual activities. Those that show resistance towards group therapy should be offered the possibility of individual therapy.

5.3.3. Forming Therapy Groups and Developing Programmes

After completing activities in the motivation group or individual activities, a meeting (conference) would be organise to consider and sum up the achieved results in the three-month trial period and an assessment of prisoner participation would be made, as well as an assessment of specialised staff and a decision would be made on next steps, plans would be made for further activities with a clear objective and responsibilities of the specialised staff.
These plans should contain the following elements:

- formulating concrete individual treatment objectives,
- individual and group therapy programmes with a clear orientation and objective,
- creating the preconditions for the offender to face his own problem,
- level of risk and social threat posed by this problem to the community.

At this second stage, the offenders would be introduced into a therapy programme to be conducted at a prison.

Locations
Conducted in one prison in FBiH and in one prison in RS. A special unit at the prison would have to be formed, with the appropriate therapeutic environment. The specialised team employed in this unit would be employed there only part-time and would spend the other half of their working day performing other tasks (as it was seen in Germany). Their methodology would be teamwork. Every representative of these various disciplines would contribute specific abilities to the treatment. Prisoners who finished the first phase in other prisons would be transferred to this unit.

The unit would be seen as a place for strengthening personality. The treatment of prisoners should, therefore, serve to strengthen their self-respect. This would be a framework or space where the prisoner's inner psychological conflicts could be played out (to the appropriate degree) in the context of group processes and where specialised staff would be able to diagnose them in a social setting and reuse them in therapeutic work with prisoners. Efforts should be made to develop new sources for emotional maturity and development of self-respect by allowing prisoners to participate in decision making and shaping their everyday life and activities in the special unit.

Objectives:

- risk reduction;
- psychological stabilisation as assistance to overcoming challenges of prison life;
- improving self-reflection skills

Group members:
Adult males serving a sentence for a sex offence with at least one more year left (no upper limit) (i.e. until the planned release from prison or deportation, etc.)

- prisoners able to sufficiently communicate in Bosnian/Croatian/Serbian language,
- prisoners in need of treatment,
- prisoners assumed to be ready and capable of treatment (in terms of intellectual capacities and readiness/capability to allow insight into their "internal world" at least in principle),
- prisoners able to participate in group therapy,
- prisoners consenting to waiving confidentiality of patient information for their doctor,
- prisoners able to abstain from drugs and who are not suffering from acute drug addiction,
- prisoners prepared to work in the workshop,
- prisoners not connected to sub-cultural structures,
- prisoners not afflicted by any type of psychosis.

Structure and duration

The group would meet 2 times a week for 1.5 hours.
The group would be lead by a co-therapeutic pair (of which one would necessarily be a psychologist) specially trained and in cooperation with the external implementer. Preference is given to specialists with experience in group therapy. Additional training in cognitive psychology is also desirable.

Duration: 60 hours.

For active participation and successful completion of this programme, the prisoner would be offered the possibility of reword in the form of conditional release after he serves 2/3 of his prison sentence and the possibility to continue actively participating in similar programmes that would be conducted in the post-penal period by specialised teams in external institutions that are professionally organised and have the expertise to deal with these issues.

For prisoners who refuse this sort of programme, it would be necessary to intensify activities on raising awareness about their necessity in order to avoid practical repercussions of their decision to be uncooperative.

Keeping the programme open for prisoners to join while serving their sentences would certainly be an advantage.

The issues that would necessarily have to be dealt with in group therapy as part of the programme would have to include the following:

1. issues related to criminal acts of a sexual nature,
2. issues related to the sexual history of the offender,
3. issues related to criminal acts with aspects of sexual violence and violence,
4. issues highlighting the social danger of criminal acts with aspects of violence and sexual violence in order for the offender to face the problem and the consequences directly,
5. issues related to the assessment of the risk posed by the sex offender to an individual and/or group in the social community where he lives,

6. issues to help the sex offender establish socially acceptable, healthy and desirable forms of communication in society in order to overcome feelings of inferiority, dissatisfaction and rejection that are frequently present in this category of prisoners,
7. issues that will pertain to teaching the offender about how to accept responsibility, improve self-respect, respect for others, improve problem solving and coping skills, develop a healthy sexual relationship with another adult.

Mode of Treatment

- Within a group where the level of risk and need is the same, the composition should be heterogeneous in terms of the type of sex offence committed.
- To achieve the best results of raising awareness in prisoners, it is recommendable to use various resources, including audio and video materials.
- Family members and other persons close to the offender should be motivated and encouraged to take part in the implementation of this form of therapy.
- A plenary meeting would be organised once a month as a central forum to discuss the general needs of the groups (the meeting would include all prisoners in the unit and all the staff working in the unit).
- individual talks with specialises as needed
- individual cells if possible
- sports group open only to inmates of the unit
- comprehensive range of leisure activities
- range of prison work activities
- professional development opportunities
- schooling opportunities
- common privileges if necessary

5.3.4. Programme to Sustain Achieved Results

These programmes should be available to all sex offenders who undergo treatment. Sustainability programmes would have to be available in all prisons where there are sex offenders. If there are not enough offenders to form a group, individual therapy is an option.

The dynamics and duration of participation in these programmes should be determined by a multidisciplinary team. Open groups are preferred. Programmes should focus on preventing relapse and reinforcing the results achieved through more intensive programmes, and should support planning for the future. This includes preparation for release from prison.

The programme should comprise at least 2 hours of therapy with contacts twice a month until the sentence is served.

5.3.5. Research and Evaluation

The wider social community would have to contain institutions, organisations and associations, and individuals who deal with the problem of sex offenders.
Cooperation would be set up with them for admission and conditional release procedures for sex offenders. This assistance would particularly pertain to more permanent accommodation and employment after release from prison.

5.3.6. Links and Cooperation with External Institutions

At the present, there is not such institution in the community that would deal with the problem of sexual disorders or with sex offenders.

VI. SUMMARY

In order for the system of managing sex offenders to be successful, it must include:

- risk assessment in terms of re-offending and possible damages
- engagement and motivation of sex offenders when it comes to achieving positive changes
- cooperation between all relevant services and agencies in risk management

Consequently, there is a need for these issues to be considered on the national level. Decision have to be made about how interventions will be conducted and implemented, which means that it is necessary to create the appropriate implementation infrastructure, including a strategy for the management of sex offenders on ministries of justice level.

Cost benefit research related to sex offenders shows that relapse in such offenders is much more costly than providing a programme and cognitive-behavioural therapy has proven to save much more than it spends.

It is also important that there is appropriate support in the community once the offenders have served their sentences and are released from prison. This means there should be a probation system or the offenders should be accepted and assisted by centres for social work who currently play the role of this service.

VII. RECOMMENDATIONS

- **Recommendation 1**

Since this is the first attempt to introduce working with this category of prisoners, we propose that introduction is done step by step and that activities are given a timeframe.

1. STEP

At the level of the ministries of justice, Sector for execution of criminal sanctions, a working group should be formed to develop a strategy of treatment for sex offenders and accompanying necessary changes to the legislation based on this document and in cooperation with the ministry of health, psychiatric institutions and mental health centres, centres for social work and other relevant stakeholders.

2. STEP

Information and education of prison staff, including the management about the strategy and importance of such work with sex offenders and about their role in the treatment.

3. STEP

Selection of prison where the pilot project is to be performed, development of pilot project and information and education of staff.
Establishing cooperation with institutions in the community that will offer assistance, respond to specific specialist issues and provide supervision for the staff. Establishing a prison environment that will be conducive to introducing the programme and establishing the multi-disciplinary team.

4. STEP

Introducing a motivational group in the pilot project prison.

5. STEP

Evaluation and analysis of pilot project results.

6. STEP

Introducing a motivational group and individual therapy in all prisons where there are sex offenders.

7. STEP

Developing a group therapy programme.
Determining the prison where the programme will be implemented.
Setting up a special unit to which sex offenders will be assigned for the duration of the treatment.
Education of staff for programme implementation.
Links with external institutions.

8. STEP

Introducing a treatment programme and its constant evaluation and adaptation to changes.

- **Recommendation 2**

The implementation of this programme will also require adequate financial resources, material conditions and staff resources.

Council of Europe
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Joint Project between
the European Union and the Council of Europe

"Efficient Prison Management in Bosnia and Herzegovina"

III. IMPROVING THE SITUATION OF VULNERABLE AND HIGH-RISK PRISONERS

GUIDELINES AND TREATMENT PROGRAMMES FOR HIGH RISK PRISONERS IN PRISONS IN BOSNIA AND HERZEGOVINA (5)

Sarajevo, April 2010

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„Guidelines and treatment programs for high risk prisoners in prisons in Bosnia and Herzegovina“ is the final document of the project.

CONTENTS

I. INTRODUCTION

Lately, prison systems have devoted special attention to the treatment of high risk prisoners with a special focus on finding a balance between security measures and activities and programmes made available, as well as the training of staff to work with high risk prisoners.

The treatment of high risk prisoners is a challenge for prison management, especially because their numbers are not large, but on the other hand, appropriate classification and assignment of such prisoners are crucial. It is known that order and discipline must be maintained by a firm hand, but not with more limitations than necessary to maintain order and well organised communal living in prison.

It is very important to have a clear definition of who high risk prisoners are and what criteria are used to determine this status. Furthermore, security classification should constantly be re-examined throughout the sentence serving period.

II. BASIC GUIDELINES FOR THE TREATMENT OF HIGH RISK PRISONERS

In every country there are a certain number of prisoners considered to be highly dangerous and requiring special conditions. This risk can stem from the nature of the crime they committed, the way they respond to limitations imposed by life in a prison, or their mental or psychiatric profile.

These prisoners are “vulnerable” in the sense that providing appropriate prison accommodation, trained staff and allocated them on a specialised regime may be a particular challenge. A uniform approach where maximum security measures are applied to such prisoners is not appropriate; instead the key question is whether special measures are truly appropriate in each individual case. In other words, what is called the individualisation of measures. Furthermore, a sort of general approach to applying high security measures is inappropriate.

Since what is considered “dangerous” must necessarily vary from case to case, there needs to be a system for regular review in order to ensure that time spent under increased security levels (and the applied level of security) does not exceed what is appropriate in each individual case. Prison management must also pay special attention to health issues that may result from such a regime and try to counter the potential negative effects of an increased level of security, especially through continuous availability of programmes for education, work and leisure activities, and other activities to the extent permitted by the security measure applied. Where there are units with high security level, they must have the appropriate capacities, staff and other necessary conditions and also all staff working with high risk prisoners must be adequately trained.

The existence of a satisfactory programme of activities is equally important—if not more so—in a high security unit than in a regular prison unit. This programme can contribute significantly to counter the damaging effects of life in the bell jar

atmosphere of such a unit on the personality of the prisoner. The activities provided should be as diverse as possible.

The notion of high risk prisoners is most often linked to the length of the prison sentence or long-term imprisonment, and from literature and from practice; it is known that not all prisoners serving a long-term sentence are particularly dangerous. At the same time, there is a good chance that some will be dangerous. On the other hand, from time to time, small groups of prisoners may refuse to abide by prison order and control and should be put under special measures. It is important that the number of such prisoners be kept at an absolute minimum.

There are at least two ways of managing such prisoners:

- the first is to put them in isolated conditions (segregation), either individually or in groups of three or four. In the most extreme cases, the prisoners are denied access to any and all activities and outside stimuli and are not given anything to do. This approach, regardless of the danger the prisoners present, is not good and is usually arrived at due to a lack of appropriate management techniques.
- The other and much more positive approach is to separate problematic prisoners into smaller units comprising up to ten prisoners (high security units). This approach is based on the assumption that positive security measures can be provided for problematic prisoners by limiting them to "group isolation" instead of individual solitary confinement.

Based on the above, we can say that the following is important when forming special units:

- defining high risk prisoners,
- assignment criteria and individual approach,
- accommodation of high risk prisoners,
- security measures applied,
- measures to reduce risk,
- treatment and motivation programmes, and
- adequately trained staff.

III. COUNCIL OF EUROPE RECOMMENDATIONS AND CPT[48] STANDARDS

Rule 53 of the European Prison Rules[49] (hereinafter: EPR) refers to special measures to reduce risk of escape and danger to others and stress that such measures are applied only in exceptional circumstances.

With respect to prisoners kept under maximum security measures, the Council of Europe (hereinafter: CoE) has issued Recommendation No. 82(17) concerning Custody and Treatment of Dangerous Prisoners. In view of the significance of this group and the increased number of member states, in Recommendation 2003(23) on the management by prison administrations of life sentence and other long-term

[48] The most important parts of the General Reports of the European Committe for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf/E (2020)1 – Rev. 2006
[49] Recommendation REC (2006)2

prisoners, the CoE stressed the principles that member states must incorporate in to their legislation, policy and practice pertaining to the treatment of this category of prisoners.

To a large extent, the recommendations reflect the views of CPT that stipulate how prisoners may be subjected to special security regimes while they are considered to be a risk, but necessitate regular reviews of such decisions. In the interest of humane treatment, maintenance of effective control and security, and the need to ensure staff security, emphasis must be placed on achieving a good internal atmosphere in such units by establishing positive relations between the prisoners and the staff.
Furthermore, high risk prisoners should "within the confines of their units, enjoy a relatively relaxed regime by way of compensation for their severe custodial situation" by means of socialising with other prisoners in the unit and a wider choice of available activities. It is also important that the staff working in such units possess the skills and knowledge necessary for such work and that there is a multi-disciplinary team managing and supporting prisoners in such units.

As for the special category of prisoners serving sentences for **war crimes** committed in Southeast Europe, they are a small, but nevertheless important part of the total prison population. The existing standards contain very few concrete guidelines for their treatment. When it comes to the presence of such prisoners, their particular crimes may cause prejudice and ethnic tensions not only among other prisoners, but also among the staff.

The EPR do not devote special attention to this type of prisoner, but do contain clear guidelines applicable to all prisoners. Reports on CPT visits to Southeast European countries have indicated problems in the application of general European standards, especially when it comes to maximum security units for the custody of prisoners serving sentences for war crimes.

Here, we can also mention **prisoners serving sentences for organised crime and terrorism**. The EPR does not directly refer to such prisoners in the context of security levels, but there is the Council of Europe Convention on the Prevention of Terrorism from 2005 (No. 196).

In the *Council Framework Decision* of 13 June 2002 on *combating terrorism*, nine offences – of which almost all are defined as offences in the majority of national criminal codes – were defined as "terrorist offences" when committed with the aim of seriously intimidating the population, unduly compelling a government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation. This definition of *terrorist intent* is a leading definition for EU member states and must certainly also be taken into account by responsible bodies of CoE member states that are (still) not EU member states.

When treating the problem of organised crime, relevant international documents mostly refer to crimes such as illegal drug trafficking, money laundering, illegal arms trade, illegal hazardous waste trade, and smuggling of persons, without clearly connecting these crimes with a terrorist intent. To find a legal definition of "organised crime" valid on the European level, we can turn to a definition from the Council of

Europe Recommendation (2001)11 concerning guiding principles in the fight against organised crime. It says that an "organised crime group" is a group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes, in order to obtain, directly or indirectly, a financial or material benefit; a "serious crime" is defined as "conduct constituting and offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty." However, neither this one, nor any other recommendation mentions how such convicted "gangsters" should be treated (apart from mentioning members of criminal organisations).

CPT reports rarely facilitate identification of individual prisoners, but the Committee did report on prison conditions for a famous imprisoned terrorist who was kept in custody in a facility as the only inmate.

With high risk prisoners, it is particularly important to make sure the prisoners maintain good contacts with the outside world, especially with friends and family, and emphasis is put on the need for a certain degree of flexibility.

IV. LEGAL BASIS AND DEFINITION

There are certain types of risk classification based on the crimes of which the prisoners were convicted, such as the following crimes contained in all three Enforcement laws:[50] the crimes of genocide, crimes against humanity, war crimes, terrorism, unlawful drug production and trafficking, preventing the return of refugees and displaced persons, and the following crimes contained only in RS: Enforcement Law robbery, rape, sexual intercourse with a disabled person, sexual violence against a child, human trafficking for the purposes of prostitution and organised crime.

Enforcement Laws BiH, Art 153/2, RS Art 115/1 and FBiH Art 90/1 classifies prisoners convicted of the above crimes into the category of prisoners for whom privileges will not be approved before they have served one half of their prison sentence, and this is also applied to prisoners sentenced to a prison sentence of more than ten years regardless of the type of crime they were convicted of, and to alcoholics, drug addicts and multiple re-offenders. This legal regulation can serve as a basis for defining high risk prisoners that require special security measures.

Definition

The term high risk prisoner can be defined as follows:

- prisoners classified as high risk prisoners by Enforcement laws in force on the basis of the type of crime they committed and the length of their prison sentence,
- Prisoners exhibiting behaviours classifying them as high risk prisoners,
- prisoners who had already committed a particular security breach (attack against prison staff, hostage taking, escape attempt),

[50] Official Gazette of BIH No. 12/10
Official Gazette of F BiH, No. 44/98, 42/99 and 12/09
Official Gazette of RS No. 12/10

- prisoners considered mentally unstable, prone to violence and prisoners that pose a risk of unexpected attacks,
- prisoners that pose the risk of being freed by third parties,
- prisoners whose behaviour outside the prison facility gives cause to the assumption of extreme proclivity to violence,
- prisoners that had already actively participated in a revolt or initiated one.

This definition is to be applied individually and warrants the implementation of a treatment programme with a security and rehabilitative aspect. The measure to be applied must be determined separately for each individual prisoner and care should be taken to adhere to European standards and to avoid any potential breach the prisoner's human rights.

RS Enforcement law foresees units with a special regime and units with maximum security and intensive treatment programme. The special regime unit is regulated by the Law on the Special Regime of Enforcement of Prison Sentences[51], which determines this unit as a special unit within a closed prison.
BiH and FBiH Enforcement laws do not provide for special units or for special treatment of high risk prisoners.

V. CURRENT CONDITIONS FOR HIGH RISK PRISONERS SERVING THEIR SENTENCES

5.1. Institutions where high risk prisoners serve their sentences

There are currently three closed prisons where high risk prisoners are assigned for serving their sentences:

- KPZ (prison) Zenica in FBiH,
- KPZ (prison) Banja Luka and KPZ (prison) Foča in RS, with the majority of high risk prisoners assigned to KPZ Foča.

At KPZ Zenica and KPZ Foča, activities are conducted to develop and establish specially equipped and structured units for high risk prisoners indicating that the system is to be centralised, i.e. that high risk prisoners from the area of the whole entity will be assigned to one these two special units respectively.

A special law was adopted in RS to regulate the procedure for assigning prisoners to the Special Regime Unit, the organisation of the Unit, the position of the prisoners, and the disciplinary and material responsibility of the prisoners. The Special Regime Unit is to be established by the Minister of Justice as a special closed unit within closed prisons.

The foreseen capacity of this unit in KPZ Foča is 38, single cells are foreseen, but with technical and legal provisions that allow them to be used as doubles if needed. All cells are equipped with a toilet and shower; prisoners are able to use a common area

[51] Official Gazette of RS No. 30/10

for walking and sports activities (table tennis and the like) in line with the proposed individual treatment programme.

At KPZ Zenica, the High Risk Prisoner Unit has a planned capacity of 60, the cells are single and double, and some cells can be used to accommodate three or four prisoners. All cells are equipped with a toilet and shower, and the only foreseen common area is a walking area.

Apart from these units that are still not operational, the closed KPZ in RS currently has units with maximum security and intensive treatment programme. These units are also used for applying the measure of isolation.

The KPZ Zenica Rules established a Group for Intensive Individual Treatment of Prisoners situated in a special pavilion and also used for the administrative measure of isolation.
At the state level, there are currently activities to build a State Prison where, among others, high risk prisoners will serve their sentences. According to the Enforcement law in force, a maximum security unit is not foreseen on the state level, but the entire prison structure is foreseen as a closed prison with high security measures.

5. 2. Serving of sentence

5.2.1 Admission

The admission procedure takes place in line with the law. One of the most important processes at the admission unit in terms of the future regime is the classification of prisoners, that is, the proposed treatment programme.

5.2.2. Accommodation

Prisoners serving their sentences in the unit with Maximum Security and Intensive Treatment Programme at KPZ Foča are housed in separate buildings where the administrative measure of isolation requiring a somewhat stricter regime is also applied. The capacity of this unit is 14 regardless of the type of measure applied.

When determining the measure of assignment to this unit, a “Programme of individual treatment for prisoners of the Unit” is also developed. The programme also contains security measures applied to the prisoner. This programme also determines the level and type of risk (assignment, custody and schedule of activities at KPZ Foča are regulated by instructions from the Director).

At KPZ Zenica, prisoners undergoing the measure of intensive individual treatment and isolation are also housed in a separate building (pavilion II), that is, in the “group for intensive individual treatment”. All activities related to assigning persons to “special quarters for the purposes of intensive individual treatment” are conducted on the basis of the House Rules. The capacity of the group for intensive individual treatment is 6 double rooms (12 prisoners), rooms for the disciplinary measure of solitary confinement, 17 single rooms and 6 double rooms (29 prisoners), one medical solitary confinement room and one solitary confinement room with video surveillance. The total capacity is 43.

Assignment to these quarters is limited to 90 days. These units are also used for applying the administrative measure of isolation. In contrast to KPZ Foča, the decision on assignment, custody and removal from the "Group" is made by the Treatment Service. The schedule of daily and periodical activities, security measures, medical services, etc. during assignment to this unit is regulated by an order of the prison director.

5.2.3. Length of stay, monitoring and transfer

The length of stay of prisoners in various units and the length of imposed administrative measures varies from one Enforcement law to another. Thus, for example, the RS Law foresees that the prison director may, after obtaining the opinion of the prison doctor, instruct that a measure of isolation lasting up to two months be imposed. In special cases when the reasons for the isolation measure have not been removed after two months, the measure may be extended, but the total time of isolation may not exceed 120 consecutive days.

In order to maintain order and discipline, as well as general security at the prison, special measures may be applied to prisoners constantly disrupting order and posing a security risk, as provided by the Enforcement law:

- Intensified surveillance (the duration of this special measure is not limited),
- Confiscation of an object otherwise permitted (this measure is temporary and applied while there is cause),
- Testing for contagious diseases, alcohol and narcotics,
- Separation into a room without dangerous objects,
- Assignment to a medical cell with intensive surveillance,
- Assignment to a maximum security and intensive treatment programme unit (this measure is not limited in duration, but must be reviewed every three months), and
- Isolation.

According to the Law on Special Regime, Article 6, paragraph 1, the duration of assignment to the Unit cannot be less than six months and can be repeatedly extended for the same length of time, while making sure that the duration of assignment to the Unit is proportional to the degree of risk posed by the prisoner.

According to the FBiH Enforcement law, prisoners whose behaviour makes them a serious threat to the security of personal belongings and property of the institution may be placed in isolation for a time period of one sixth of their sentence, but isolation may not last for more than three months at a time.

Apart from the isolation measure, at KPZ Zenica, the assignment of prisoners to the Group for Intensive Surveillance on the basis of the Prison Rules is limited to 90 day, but cannot be less than 30 days.
Article 95, paragraph 1 of BiH Enforcement law foresees the administrative measure of isolation, but limits it to 30 days with the possibility of extension for no more than an additional 30 days.

It is clear from the above that legislation differs when it comes to the duration of isolation measures, while the special measures foreseen by the RS Law are not foreseen at all at the FBiH and BiH levels.

5.2.4. Treatment

During assignment of prisoners to units or groups with increased surveillance, apart from the service providing security measures, in KPZ Foča, the proposed individual treatment programme also foresees the possible employment of a multi-disciplinary team (educators, psychologists, neuro-psychiatrists, social workers) to work with high risk prisoners either in groups or individually depending on the proposed individual treatment programme.

At KPZ Zenica, apart from security officers, educators also work more intensively with high risk prisoners assigned to the group for intensive individual treatment and isolation.

1. Prisoners and work

At KPZ Foča, the Director's instructions do not directly address the issue of high risk prisoners assigned to the maximum security and intensive treatment programme unit working, while work for prisoners in the unit for the special measure of increased surveillance is allowed depending on the proposed individual treatment programme.

According to Article 11, paragraph 9 of the Law on Special Regime, during assignment to the Unit, prisoners may be allowed to work within the Unit under strict controlled conditions with special concern for security.

Prison work for prisoners in the Group for increased individual treatment at KPZ Zenica is allowed under constant surveillance by security guards.

2. Treatment and programmes

At the Maximum Security and Intensive Treatment Programme Unit of KPZ Foča, individual and group treatment work is foreseen, such as intensive individual work (educator and psychologist) and moderate work (psychologist), as well as group work (group therapy for drug misusers, group work for prisoners with pronounced serious problems, group work with prisoners who have special needs). These are persons who are suicidal, have problems with communicating and socialising. For these programmes a multi-disciplinary team is foreseen including educators, psychologists, doctors, neuro-psychiatrists and social workers, as needed.

3. Leisure activities

This matter is regulated differently in RS and in FBiH. At KPZ Foča, the matter of recreational activities is not specifically regulated for prisoners assigned to the Maximum Security and Intensive Treatment Programme Unit. Recreational activities are allowed for prisoners under increased surveillance, but in line with their individual treatment programmes. Recreational activities in the Group for increased individual treatment at KPZ Zenica are allowed under constant surveillance by security officers.

4. Preparation for transfer

Prior to transfer from the Maximum Security and Intensive Treatment Programme Unit, a plan is made seven days in advance with proposed follow-up measures and treatment. There are no such provisions at KPZ Zenica.

5. Contact with the outside world

Contact with the outside world is regulated by orders and instructions of the prison director allowing telephone access, newspaper subscriptions and deliveries, access to TV and other media under certain conditions, as well as visits and packages, all in line with the individual treatment programme.
Article 11 of the Law on Special Regime regulates the manner in which prisoners can enjoy the right to contact with the outside world, telephone access, correspondence, receiving packages and visits, as well as the limitations that may be imposed on this right.

5.3. Brief Summary

The above analysis of the current situation of high risk prisoners in BiH shows that this matter is approached differently in the two entities and on the level of BiH. There are also differences in legislation, so that for example, RS Enforcement Law foresees assignment to a maximum security and intensive treatment programme unit, while FBiH and BiH laws do not foresee such a measure. This leads to discrepancies in the treatment of high risk prisoners.

In FBiH, law the issue of disciplinary measures, isolation and other measures is left to the House Rules of the individual prison, issued by prison director. Furthermore, there is an evident lack of quality programmes, although international standards and good practice examples indicate that such programmes can prevent the detrimental effects on prisoners of spending time in an atmosphere of increased security measures and isolation.

VI. PROPOSED TREATMENT PROGRAMME FOR HIGH RISK PRISONERS

Points 52, 53, 54, and 55 of the Report (CPT)[52] address the situation in high security units at KPZ Foča and KPZ Zenica, and provide certain remarks and suggestions related to architectural-technical-technological solutions, but also related to the issues of quality treatment programmes for prisoners assigned to these units. They also point out the necessity of a clear legal basis for assigning prisoners to a high security level unit. This recommendation reflects the need for a quality structure of this area and contains additional suggestions below.

[52] CPT Report on visit to BiH, 19-30 March 2007, CPT/Inf(2007)25 and CPT/Info(2009)26

- **Recommendation 1**

Develop a strategy of work with high risk prisoners within special units
The Sector for the Execution of Criminal Sanctions must develop a strategy of work with high risk prisoners within special units that would entail:

- criteria for assignment to such units,
- criteria for transfer out of the unit,
- unit capacity,
- services provided by the unit, programmes available to prisoners (education, special programmes, leisure activities),
- behaviour expected from high risk prisoners,
- interactive social contacts available to prisoners,
- security measures and procedures,
- process for transfer out of the unit,
- staff working with high risk prisoners, and
- unit management.

The mission and objectives of this type of unit should also be stated, including:

- ensuring a constructive, dynamic and caring environment actively engaged in working with high risk prisoners to reduce rage/anger and violence and help high risk prisoners rejoin the general prison population,
- treating high risk prisoners in a decent and dignified manner,
- working to prevent suicide,
- responding to the individual needs of each prisoner, including care for mental health and needs arising during the process of managing and executing their sentences,
- minimising time spent within the unit,
- providing a multi-disciplinary team to work with high risk prisoners,
- ensuring effective external and internal inspections, and
- the unit must have a finalised development plan.

Humane treatment, reduction of anger and violence and return to the general prison population should be clearly defined and confirmed in staff operative work, programmes and training.

Namely, the procedure for assigning a prisoner to an “increased surveillance unit” must be clear and fair, and regulated by laws and bylaws, with clear instructions and orders. CPT recommendations from the abovementioned Report should be taken into account.

- **Recommendation 2**

Admission procedure
The admission procedure stipulated by law shall be conducted in line with the admission document devised by this project.

When deciding about assigning a prisoner to the unit, the following matter should be taken into account:

- Does the prisoner have a history of escaping or escape attempts,

- Has the prisoner received assistance with the above from someone outside the prison,
- Does the prisoner have a history of involvement in severe violence or a history of problems with behaviour, discipline and mental health during the serving of the sentence,
- Was the prisoner involved in serious violent crimes and/or serious sexual offences either inside or outside the prison,
- Was the prisoner a member of organised crime groups,
- Did the prisoner ever join or assist paramilitary organisations,
- Does the prisoner have a record of attacks, threats, drug smuggling and drug dealing, intimidation or harassment of other prisoners during prior or current sentence periods,
- Would the prisoner's escape pose a risk to public peace and order,
- Is the prisoner aggressive or confrontational with staff, and
- Are there indications of present or prior influence on other prisoners, has the prisoner organised revolts or disruptions of discipline.

High risk prisoners may be assigned to special units directly from the admission unit or may be transferred due to problems arising during their sentence as per the definition of high risk prisoners. The individual treatment plan (created using the template enclosed below) also defines security measures. The prepared individual treatment plan takes into account the definition from section III of this document.

A high risk prisoner is assigned to the unit by a decision (usually issued by the prison director) that includes a legal remedy. The decision must contain an explanation of why the prisoner is assigned to the unit.

- **Recommendation 3**

Classification and re-classification
With classification and re-classification, it is particularly important to use risk assessment tools that make up part of the admission procedure and are an objective instrument of classification widely used in European countries. This instrument enables prisoners to be assigned to various units according to risk and it is also a way to organise security measures. On the other hand, it also provides prisoners with guidelines towards potential transfer back (return) to the general prison population.

A regular re-classification procedure must be defined, as well as the possibility of unplanned re-classification to be performed as needed or in flexible intervals. This would enable high risk prisoners a change of status and progression to a more comfortable regime of security measures (progression principle).

- **Recommendation 4**

Healthcare services
High risk prisoners in special units need to be provided with adequate health protection. Ways to secure adequate health protection vary from doctor visits in individual cells, visits of prisoners to a doctor's office within the unit or organised visits by prisoners to the prison infirmary. It is also necessary to develop procedures for

cases of emergency. As for providing health protection, there must be clear procedures with full adherence to necessary security measures.

Although high risk prisoners are not assigned to this unit for purposes of punishment, most of them see it as punishment. Because the prison medical service must be active to prevent negative impacts on the mental and physical health of these prisoners, especially because most of them will often already have mental health issues, specialist support must also be provided. The conditions in the unit must be such so as to cause as little damage to the mental and physical health of prisoners as possible.

- **Recommendation 5**

At certain stages during their stay, high risk prisoners assigned to the special unit may exhibit suicidal or self-destructive tendencies.

The Sector for execution of criminal sanctions needs to develop a Suicide Prevention Strategy (as mentioned in many documents) that would contain:

1. a prison staff training programme to learn how to notice symptoms of potentially suicidal persons,
2. a questionnaire or procedure for use of questionnaire about the risk of suicide in prisoners, determine main actors and training programme
3. ways of intervention (reaction) when it is found out that someone is a suicide risk,
4. ways of intervention (reaction) in case of a suicide attempt,
5. ways of intervention (reaction) when someone has committed suicide,
6. analysis of events,
7. assistance to prison staff.

The bearers of these activities in the special regime unit must include a psychologist, a social worker and members of the security service.

- **Recommendation 6**

The importance of continuous education of prisoners about personal hygiene
As part of the measures making up the health protection programme, it is necessary to continuously educate prisoners about the importance of personal and collective hygiene for health and prevention of various diseases.
Care for matters of personal and collective hygiene in special treatment regime units is entrusted to the medical service in cooperation with the security service.

- **Recommendation 7**

Importance of work programme for high risk prisoners
The programme of work and treatment of high risk prisoners are very important for their rehabilitation and relaxation. The programme and treatment should include activities and actions to be undertaken when working with this category of prisoners. As noted by CPT, programmes are perhaps even more important in special than in

“ordinary” units. The more programmes that are made available to the unit, the less vulnerable the high risk prisoners will be and the less likely to react in a negative way.

1. Work and professional development

One of the specific shortcomings of the treatment of high risk prisoners in BiH to date was that apart from being separated and assigned to high security units, they were unable to partake in prison work activities. This approach leads to prisoners spending time in idleness and monotony, making them problematic, depressive, etc.

In line with positive legal regulations and passed measures, it is necessary to enable high risk prisoners in special units to engage in work according to the capacities and needs of the prison. Work activities can be organised within the unit in the following manner:
- individual work in a room or cell,
- turn one room or cell into a workroom to accommodate more prisoners,
- make a workshop in the unit,
- flexible work hours (e.g. in shifts of four hours for different groups).

Apart from these activities, it is possible to engage prisoners in cleaning and maintenance of common areas (living area, walking area, corridors and the like) if security measures allow for it.

To summarise, it is necessary to determine the following binding priorities:
- it is necessary to provide all prisoners with access to work,
- as far as capacities, security measures and needs allow, prisoners should be allowed to choose among offered work activities,
- the duration of work engagement for prisoners should be in line with the capacities of the prison and relevant security measures,
- the work of prisoners must be adequately materially valued and rewarded in line with positive legal regulations,
- the work programme for prisoners must ensure professional development that can benefit prisoners after release from prison or transfer to a lower security regime unit.

Staff engaged in implementing the work programme should be a multi-disciplinary team made up of members of the security service, psychologists and instructors from work units in the prison.

2. Education

Within the unit, it is necessary to organise a wide variety of education programmes adapted to relevant security measures, such as for example, individual educational activities, enabling instruction, taking exams in prison, learning via the internal TV, distance learning, forming small classes, correspondence courses and the like, regardless of what level of education is at stake.

Education of high risk prisoners should begin with their basic needs:
- reading, writing and basic arithmetic courses,
- primary education programme,

- vocational education and training programme (industrial work, crafts, trades, etc. – these programmes should be in line with labour market trends),
- secondary education programme,
- specialised programmes-courses (foreign language courses, licensed training in working with computers, e.g. ECDL),
- educational and other programmes (general education, lifestyle and other areas, especially those for which prisoners exhibit a particular interest).

High risk prisoners should be enabled to continue education programmes started in special units after being released from prison or transferred to a lower security regime, and vice versa.

The implementation of these programmes is entrusted to the treatment service in cooperation with the security service and with engagement of the outside community to the extent possible.

3. Leisure activities

Leisure activities are very important for high risk prisoners so that they may overcome the feeling of isolation and the bell jar effect. The leisure activities programme should be organised in line with relevant security measures.

❖ Sports activities

High risk prisoners should have access to as much sports activities as possible, both individual and group sports (table tennis, body building, fitness, basketball, volleyball, football, etc.)

In special units, it is particularly important to invest additional efforts to provide as wide a range of sports activities as possible. Participation in sports activities can also be used as a motivation element for prisoners to participate in other programmes, etc.

❖ Access to the open air

Circumstances permitting, the special unit should have a separate walking yard in order to successfully organise access to open air in line with all relevant security measures and international standards according to which these yards must be relatively spacious and have shelter from weather conditions.

❖ Socialising of prisoners, social games, groups, library, reading materials

Within the unit for high risk prisoners, those allowed interaction should have organised daily common time. In the day room, it is necessary to ensure socialising with the help of social and entertaining games that are not disruptive to order in the prison (chess, monopoly, cards, dominos, etc.). The schedule for use of the day room is to be determined by the unit rules. It is recommendable to install a common TV-DVD set in these common areas in order to enable common viewing of popular TV shows, important sports events, DVD movies or educational programmes. The day areas can also be used by groups or clubs if there are many prisoners interested in joining a group or club.

The day room should also provide prisoners with access to daily newspapers.

High risk prisoners allowed to interact should be provided with a relatively diverse programme of common activities by way of compensation for undergoing a stricter regime. According to CPT recommendations, the time when prisoners should be engaged in activities outside their cells should be eight hours or more, and this applies to special units as well.
Library access should be organised so that prisoners can use the prison library, but also have access to books through the canteen, packages or other permissible ways.

4. Meeting religious needs

High risk prisoners in special units should be enabled to fulfil their religious needs, and there are various ways to do this in view of the relevant security measures. The religious priest may come to the individual prisoner's cell or small groups may be formed for religious services. There should also be a list of religious objects that high risk prisoners may have with them for the purposes of practicing their religion.

5. Contact with the outside world

- ❖ Letters, telephone access

The individual treatment programme determines the security measures to be applied in relation to telephone access and correspondence of high risk prisoners. The right to unhindered communication with the outside world cannot be denied even in cases of high risk prisoners, but in cases where there are strong security reasons to limit this right, certain security measures may be applied to that effect.

- ❖ Maintaining links with the family – visits

High risk prisoners need to be provided with opportunities to nurture family contacts, because this has a positive effect on their mental and physical state.

6. Preparation for release or post-penal assistance

High risk prisoners may be released directly from the unit or from a lower security regime. Experts recommend avoiding direct release from a special unit and having a transition period in a lower security level unit.

Programmes of preparation for release are conducted by social workers and they entail:

- assistance for finding employment (where to go, how to write a request, how to act at an interview, etc.)
- assistance in securing a place to live,
- assistance for enrolling in educational programmes at the KPZ and continuing education after release,
- assistance and mediation in overcoming family problems,
- promoting active involvement of external institutions in post-penal work, and
- mediation with non-governmental organisations engaged in post-penal activities and providing assistance to prisoners.

7. Special programmes

It is necessary to organise certain programmes for high risk prisoners in special units, such as:

- **Programmes for violent offenders**

Similar programmes (such as for example the ATT programme in Germany) are applied in European countries with the aim of using a pedagogical-confrontational concept to make prisoners face their own aggressive behaviour, their own actions and the consequences for their victims. It is also their aim to point out the senselessness of violence as a way of life. Apart from that, they encourage a feeling of guilt and shame over one's actions that should then lead to rejection of violence.

These programmes would be conducted by treatment staff.

- **Anger management programmes**

These programmes provide participants with a range of relaxation techniques and require that participants keep a so-called anger log so that their emotional patterns, incentives and triggers could be easily identified and controlled. There programmes also enable participants to develop assertiveness skills.

- **Substance misuse rehabilitation and detoxification programmes**

Rehabilitation programmes are to be applied in line with the document "Guidelines and Treatment Programmes for Drug Misuser Prisoners" developed by this project.

Ways of working with high risk prisoners can be in groups or individually. Individual counselling is often employed as it enables high risk prisoners to face their behaviours.

8. Security

Security measures depend on the physical structure of the unit, but also on sensitive and well trained staff. Technical resources can help in ensuring security. In is important that there are clear operative security procedures that everyone is familiar with. It is also important to keep a record of routine documentation on activities and events in the unit.

9. Staff and their training

In order to conduct the adopted programmes well, it is important that the staff selected be well chosen, trained and equipped, and in possession of the necessary knowledge, skills and experience to perform the set tasks required by this category of prisoners. In that sense, it is necessary to organise quality training suited for members of various services in the unit.

The special unit should have a multi-disciplinary team with the following profile of skills:

1. unit manager,

2. educator,
3. social worker,
4. pedagogue,
5. psychologist,
6. healthcare worker,
7. work service instructor, and
8. security service

Work with this category of prisoners in a special unit is very sensitive and demanding. A systematic and specialised multi-disciplinary team must have a very professional approach. If the need arises for other expertise, external professionals may be engaged or access gained through non-governmental organisations working with prisons and similar institutions. If full-time employment is not necessary, part-time engagement may be organised.

10. Social climate in the unit

Ways of interaction in the unit area also connected to the possibility of social contact with other prisoners and with the staff in the unit. The staff must be specially trained for communication with this particular type of prisoner in order to assist and support them.

11. Duration of assignment to special unit

The duration of assignment is defined by law, as well as the review procedure to change that duration. Many times the duration of assignment depends on the risk posed by the prisoner, changes in behaviour, remaining duration of sentence, psychological changes and other factors. As we have already mentioned, there should be criteria for release from the unit.

VII. SUMMARY

The functioning of prisons as well ordered organisations is based on clearly determined legal frameworks and structured rules and regulations that are fair and obligatory. Legal rules must define a system of respect for discipline, but also stipulate sanctions for those that deviate from acceptable behaviours as per positive regulations. The system of sanctions must be fair and impartial.

International regulations deem that the purpose of prisons is not only to protect society from crime by removing criminals, but it is also an attempt to rehabilitate and re-socialise the prisoners as much as possible. Consequently, the prison management must find a balance between security measures implemented and the reintegration and re-socialisation programme for prisoners. This is particularly applicable to high risk prisoners where this problem is more pronounced.

The practice to date has shown that it is not enough to keep prisoners in isolation without duties, treatment programmes or motivational factor; on the contrary, this is often counter-productive. In special units, the relationship between the high risk

prisoners and the staff are also very important because they can contribute to a better social climate in the unit.

This document is an attempt to structure and expand the range of treatments for high risk prisoners within the existing legal frameworks, in a good quality manner and to general benefit.

VIII. APPENDENCIES

Appendix 1: Proposed individual treatment program
Appendix 2: Individual risk factors

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III. IMPROVING THE SITUATION OF VULNERABLE AND HIGH-RISK PRISONERS

Appendix 1

PROPOSED INDIVIDUAL TREATMENT PROGRAMME FOR HIGH RISK PRISONERS

PROPOSED INDIVIDUAL TREATMENT PROGRAMME FOR PRISONERS

1. Prisoner's first and last name:_____
2. Type of crime and length of sentence:_____
3. Main collective ***or prison***_____
4. Main educator:_____
5. Type of measure:_____

6. Reason for imposed measure or transfer to ***unit:***

_____

_____

_____

7. Duration:

_____

_____

_____

_____

8. Extension of special measure and explanation:

_____

_____

_____

_____

_____

_____

_____

_____

_____

Risk Assessment

a) high risk b) medium risk

Types of Risk

a) liable to attempt escape
b) tendency towards violent behaviour
c) threat to other prisoners and staff
d) destructive
e) member of informal prisoner group
f) connected with crime groups outside the institution
g) momentary unpredictable cases of mental instability with high degree of aggression

Security Measures

a) constant 24-hour surveillance by Security Service
b) surveillance during all activities outside the ***Unit***
c) forbidden contact with other prisoners
d) permitted contact with other prisoners under surveillance, more precisely_____
_____
e) no risk from contact with other prisoners

Educational Treatment

Individual Educational Treatment

a) intensive individual educational work (educator, psychologist if needed)

(work is programmed based on type of risk due to which prisoner was transferred to the unit)

Forms of group educational work

a) work in community therapy for drug addicts (psychologist, social worker, educator, institute doctor in coordination with specialist neuro-psychiatrist)
b) specialist form of team work with prisoners currently exhibiting serious problems (educator, psychologist, social worker)

c) specialised form of team work with prisoners with special needs

Healthcare Treatment

a) more frequent visits by institute staff

b) regular visits by institute doctor

c) neuro-psychiatrist visit

Devices and objects the prisoner is permitted to use in his room in the Unit to which he was assigned:

a) TV b) DVD c) MP 4 d) hotplate e) smoking accessories f) shaving set g) books h) daily newspapers i) daily medication

Schedule of daily activities:

9. Access to fresh air a) Area only for the Unit b) Area in front of building c) Duration: 2 hours d) Surveillance needed YES/NO	**10. Work** a) Working rooms, workshop within the Unit b) Work within prison premises (gardening and maintenance) under Security Service surveillance c) Special room outside the Unit under Security Service surveillance
11. Leisure activities a) Sport (table tennis) YES/NO b) Sport (basketball/football) YES/NO c) Board games (chess, cards, yahtzee) YES/NO d) Use of library books YES/NO	**12. Warm drink** a) In the Unit b) In the canteen d) Surveillance needed YES/NO c) Provided d) Prepared by prisoner
13. Cigarette consumption a) In prisoner's room/cell b) In special room within the Unit c) Permitted to use smoking accessories in his room/cell YES/NO d) Surveillance needed YES/NO	**14. Body search** a) Body search necessary YES/NO b) Method of search – regular/sporadic
15. Books and magazines a) Permitted YES/NO b) Permitted procurement through institution c) Permitted procurement by package and post d) Subscription to daily newspaper YES/NO Name of daily newspaper_____	**16. Telephone** a) Phone booth within KPZ premises d) Surveillance needed YES/NO c) Without presence of other prisoners YES/NO

17. Canteen procurement c) Without presence of other prisoners d) Surveillance needed YES/NO	**18. Religious needs** a) Rooms designated for religious purposes b) Rooms of the Unit c) Surveillance without presence of other prisoners YES/NO
19. Medication a) In rooms of the Unit b) In the infirmary c) Surveillance without presence of other prisoners YES/NO d) Permit medication for whole day YES/NO (taking into account the disease/condition)	**20. Medical examination** a) Infirmary b) Room within Unit c) Surveillance without presence of other prisoners YES/NO
21. Meals a) In rooms of the Unit b) Canteen of prison kitchen c) Surveillance without presence of other prisoners YES/NO	**22. Laundry** a) In rooms of the Unit b) In the laundry room c) Search of laundry submitted for washing: regular/sporadic
23. Bathing a) In rooms of the Unit d) Surveillance YES/NO	**24. Communicating with staff** a) Rooms in Unit d) Surveillance YES/NO
25. Visits a) In room for visits c) Separate from other prisoners c) Surveillance: YES/NO d) 60-minute visit once a month d) Possibility of unscheduled visits YES/NO	**26. Packages** a) one package per month up to 8 kg b) In room for delivery of packages and post c) Without presence of other prisoners d) Surveillance needed YES/NO

CHANGES TO TREATMENT PROGRAMME

_____

_____

_____

Date Educator

_____ _____

_____ _____

Head of Security Service Head of Treatment Service

A P R O V E D B Y

_____

KPZ Director

Consent

Prisoner

_____

Date _____

DELIVERED TO:

-Treatment and Re-Education Service

-Security Service

-Healthcare Service

-archives

-Prisoner

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III. IMPROVING THE SITUATION OF VULNERABLE AND HIGH-RISK PRISONERS

Appendix 2

INDIVIDUAL RISK FACTORS

INDIVIDUAL RISK FACTORS

The list of criteria, without being exhaustive, contains predicted signs that expert literature and practice to date have identified as applicable and appropriate. This list is a working instrument for systematic case analysis. Each group is complemented by a series of favourable and unfavourable factors.

Apart from regular criteria for assessing risk and needs of prisoners, when reviewing the need to assign the prisoner to the unit, this mechanism can be used to assess individual risk factors.

1. Act(s) in question	**Favourable**	**Unclear**	**Unfavourable**
Favourable First offence without excessive use of force	Unfavourable Act of cruelty with excessive use of force ("overkill")		
	Act in question as part of serial offences		
High risk specific link between perpetrator and victim: cannot be substituted by another victim			
	Offence with high degree of risk of re-offending (so-called Basisrate)		
2. Development of criminality	**Favourable**	**Unclear**	**Unfavourable**
Criminality as expression of changes in life, as an expression of a fateful conflict or particularly relevant situation	Criminality long adopted form of behaviour, beginning delinquency as child or teenager, coming from an asocial environment		
	Earlier violent offences, and offences with excessive use of force		
	Earlier serial offences		
	Unsuccessful in reducing security level for serving sentence or prior breach of parole		
3. Personality, psychological disorders	**Favourable**	**Unclear**	**Unfavourable**
Temporary brief disorders, rapid retreat of symptoms	Long-term or chronic symptoms related to delinquency; Permanent disorder related to persons, mental disorders, emotional disorders and disorders related to drives		
Temporary influence of psychogenic substances without development of addiction	Regular substance abuse, High potential for addiction to psychogenic substances related to criminality		
	Worldview and attitudes conducive to delinquent behaviour		
Personality development mostly without anomalies	Personality and behaviour disorders dating back to childhood/youth, numerous asocial signs, such as lack of relationship to environment, inability to stay in one place, emotional coldness, lack of empathy		
Psychological tests without anomalies			

4. Understanding of disease/disorder	**Favourable**	**Unclear**	**Unfavourable**
The prisoner recognises and accepts things that are unhealthy, disturbed or inappropriate in his behaviour	The prisoner denies having a mental disorder and does not deem his own behaviour as inappropriate		
He is open about his personality	The prisoner tries to defend himself against allegations, to disparage or lessen them		
5. Social competence	**Favourable**	**Unclear**	**Unfavourable**
Well socialised in all areas, stable working relationships	Noticeable anomalies in professional/social effects, unstable working relationships.		
Interested and involved in a wide spectrum of activities	Disturbed perception of social reality, unreal expectations		
Generally satisfied with life	Unable to adapt to changing situations		
Ability to sympathise and feeling of tolerance	Disturbed communication ability		
Intact family and partner relations and ties	Socially non-integrated		
Stable friendships/relationships	Without a stable partner relationship to date		
	Criminal lifestyle, criminal identity		
6. Specific conflict behaviour	**Favourable**	**Unclear**	**Unfavourable**
The act proceeded from a single conflict situation: the prisoner is able and has behaved differently in similar situations	The prisoner keeps getting into the same conflict situations, provokes them himself and stereotypically reacts by conflict behaviour		
Good self-control in other conflict situations	Low threshold for frustration, impulsiveness		
7. Facing the act	**Favourable**	**Unclear**	**Unfavourable**
Ready to face his act (especially to analyse motivation, breached norm), noticeable regret over committed act	Refusal to accept validly determined committed act, disparaging the act, no regret		
Facing the situation of the victim, tries to find a balance provided it is not merely tactical	Projects his own wrong behaviour on the victim or third persons, e.g. on society or circumstances		
8. General therapeutic possibilities	**Favourable**	**Unclear**	**Unfavourable**
Favourable In principle, there is a very effective treatment method for the disorder	Unfavourable In general, the disorder is difficult or impossible to treat		
9. Concrete therapeutic possibilities	**Favourable**	**Unclear**	**Unfavourable**
The institution able to provide adequate therapeutic concept and necessary security is prepared to admit prisoners	There is no institution able to provide appropriate treatment		
10. Readiness to undergo treatment	**Favourable**	**Unclear**	**Unfavourable**
Participates and manages to establish a good trusting relationship with his therapist and others he is tied to	Not ready to seriously face his own disorder		
The prisoner is actively in favour of therapy, accepting even of some of its shortcomings	The prisoner refuses any form of therapy, his behaviour is defensive, he only pretends to be prepared to accept therapy		

11. Where the prisoner will stay during leave from prison and reduction of prison security measures	**Favourable**	**Unclear**	**Unfavourable**
Family relations, partner, reliable contacts with persons able to provide assistance	Lack of social contact and relationships, no partner		
Secure personal income, housing, job	No housing, job or financial security		
Good self-control	No self-control		
Restricted access to victims	Easy access to victims		
Acceptance of support measures	Does not accept support measures, not prepared to cooperate		
Realistic planning for the future, appropriate expectations	No concrete real plans		
	Return to criminal environment, unstructured free time		
12. Time after act	**Favourable**	**Unclear**	**Unfavourable**
No further criminal acts committed	Continued to commit similar or more serious criminal acts		
Improvement in symptoms causing offences	No change in criminal behavioural disorder, the same basic position in behaviour and the same personality structure still present		
Maturing, stronger personality			
Raised threshold of frustration, better resistance	Frequent conflicts		
Good ability to adapt, Good social contact at the institution	Overly pronounced adaptability to the institution		
Adopting new conflict and problem resolution strategies	No progress made in therapy, frequent interruptions of therapy		
Successfully implemented measure to reduce security level, appropriate behaviour during leave	Inappropriate behaviour, substance abuse		

Educator

_____

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IV – ASSISTING WITH DRAFTING A NEW LAW ON MENTAL HEALTH OR AMENDMENTS TO EXISTING LEGISLATION ON MENTAL HEALTH

PROPOSAL FOR CHANGES AND AMENDMENTS TO THE LAW ON CARE FOR PERSONS WITH MENTAL IMPAIRMENTS IN THE FEDERATION BIH AND THE LAW ON PROTECTION OF MENTALLY DISORDERED PERSONS IN REPUBLIKA SRPSKA

Sarajevo, February 2010

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"Proposal for changes and amendments to the Law on care for persons with mental impairments in the federation BiH and the Law on protection of mentally disordered persons in the Republika Srpska" is the final document of the project.

CONTENTS

FOREWORD

This report is a proposal for changes and amendments to existing legislation and for ways to make them operational and concrete. We hope this will serve as support and assistance for competent authorities when drafting amendments to existing laws.

I. INTRODUCTION

The joint project of the Council of Europe and the European Union entitled "Efficient Prison Management in Bosnia and Herzegovina" comprises six activities, of which the fourth one is assisting with drafting a new law on mental health or amendments to existing legislation on mental health.

Pursuant to the terms of reference of the above project, this activity built on the results of the previous CoE/CIDA (Canadian International Development Agency) in this field, and its team of experts: Peter Bartlett, professor at the Mental Health Chair of the School of Law, University of Nottingham, UK, Tatiana Simmins, PhD, psychiatry and psychotherapy specialist, Swiss Medical Association, Mirjana Djeric, MD, neuropsychiatrist, former director f the Sokolac Psychiatric Hospital, Republika Srpska (hereinafter RS), and Marin Zadrić, president of the Municipal Court of Ljubuski, Federation BiH (hereinafter FBiH), prepared a report entitled 'Analyses of Mental Health Regulations in Bosnia and Herzegovina with Recommendations', dated December 2008. The analysis contained 31 recommendations and upon completion it was forwarded to the relevant authorities.

The working group of the fourth project activity analysed in great detail the results of the previous projects' group. It also considered the following laws touching upon issues of protection of persons with mental disorders and/or related issues:

- Law on Care for Persons with Mental Impairments and Law on Changes to the Law on Care for Persons with Mental Impairments, FBiH,
- Law on Protection of Mentally Disordered Persons, RS,
- FBiH Family Law,
- RS Family Law,
- FBiH Law on Extra-judicial Proceedings,
- RS Law on Extra-judicial Proceedings,
- Rulebook on Enforcement of Security Measures of Mandatory Psychiatric Treatment and Mandatory Substance Addiction Treatment at Institutions for Enforcement of Penal Sanctions, Detention and Other Measures in BiH,
- FBiH Law on Health Care,
- RS Law on Health Care,
- BiH Law on Medication and Medical Treatment.

The group also took into account the following Council of Europe recommendations:

- Recommendation R(99)4 concerning legal protection of incapable adults,
- Recommendation R(2004)10 concerning protection of human rights and dignity of persons with mental disorders.

The team also looked at recommendations by the Committee for Prevention of Torture, Inhumane or Degrading Treatment or Punishment (CPT) and the relevant

CPT standards in the field of mental health, as well as the relevant case law of the European Court of Human Rights.

Relying on the work of short term consultants and the resident expert, the group evaluated both current laws on protection of persons with mental disorders and found that they both served as a good basis for protection of such persons, but that some of their components, including civil and human' rights, were weak and imprecise. As part of approximation of BiH to the EU and full membership in the Council of Europe and other international institutions, and pursuant to other international obligations, laws are to be constantly updated and improved.

II. PROPOSAL FOR CHANGES AND AMENDMENTS TO THE LAW ON CARE FOR PERSONS WITH MENTAL IMPARIMENTS IN THE FEDERATION BIH[53] AND THE LAW ON PROTECTION OF MENTALLY DISORDERED PERSONS IN REPUBLIKA SRPSKA[54]

2.1. Investigation of deaths in psychiatric institutions

A new article is to be added to basic provisions of both laws:

'Irrespective of the institution, in case of death of a person with a mental disorder, an autopsy shall be conducted in compliance with the law.'

Justification:
Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) requires an investigation of all deaths of persons in the care of psychiatric institutions.
At the moment, investigations of such deaths in psychiatric institutions in BiH do not meet the requirements of that provision. The BiH criminal legislation does contain a provision that covers investigations and autopsies in cases of deaths under suspicious circumstances. Such provisions should be harmonised with ECHR standards.

Also, both health care laws regulate issues of determination of the cause of death and autopsy, but there is also an impression that provisions are not in compliance with the standards and should be changed accordingly, in order to be consistent with human right standards, particularly with ECHR Article 2. Recommendation 3[55]: An effective and comprehensive system of investigations into deaths occurring in psychiatric and related facilities must be instituted, consistent with human rights standards and Article 2 of the ECHR in particular.

2.2. Restriction of rights through a court decision

In Article 11 of the Law on care for persons with mental impairments in the FBiH (hereinafter FBiH Law):

[53] Official Gazette of FBiH, No. 37/01, 40/02
[54] Official Gazette of RS, No. 46/04
[55] Recommendations that follow are from 'Analyses of Mental Health Regulations in BiH with Recommendations'., Strasbourg, December 2008

The phrase ‘may restrict’ is to be deleted, and the phrase ‘the court may restrict, upon a reasoned proposal by a health care institution…’

In Article 12 of the Law on protection of mentally disordered persons in RS (hereinafter RS Law), another paragraph is to be added following the last one, as follows:

‘The court may restrict, upon a reasoned proposal by a health care institution, the rights referred to in points 11, 12 and 13 of this Article, in case of a reasonable suspicion that a mentally disordered person is attempting to obtain a weapon or an illegal substance, is arranging an escape or the commission of a criminal offence, or when so required by the person’s state of health.’

Justification:
In other cases, local level decisions made by appropriate competent personnel may seem adequate, but when it comes to civil rights – certainly including issues set by ECHR – ECHR Article 6 prescribes that a decision must be subject to an independent review by a court or a similar body, should the inmate wish so. That is why restrictions of rights should be subject to judicial review.

Recommendation 6: Serious restrictions of ECHR rights should only be able to be instituted by a court. These matters include the refusal to allow access to the beneficiary by a guardian or a close family member on an ongoing basis, decisions to breach patient confidentiality, and the restriction of rights to make complaints to the court or to official agencies.

2.3. Access of official personnel to inmates

In the first paragraph of Article 20 of both laws, the word ‘may’ is to be followed by ‘propose’, and following the words ‘investigating judge’, also in both laws, the phrase ‘competent health inspector’ is to be added.

The second paragraph of Article 20 of both laws is to be changed to read as follows:
‘A psychiatrist may propose not to approve an interview of official personnel referred to in paragraph 1 of this Article with a person who is unable to understand the state he/she is in, or the consequences of such an interview, as is to be decided by a court.’

Justification:
The intention of such proposals is (1) to ensure the right of access to an inmate for official personnel conducting investigations into allegations of ill-treatment in an institution and (2) to ensure that persons who provide inspectors with incriminating statements about themselves understand the nature and the consequences of such statements.

Article 20 of both laws allows (though does not require) a psychiatrist to approve an inmate’s interview with authorised personnel of ministries of the interior, an investigating judge and competent staff of social work centres. Implicitly, a psychiatrist also decides on visits by other persons. It is not clear how this evaluation is conducted. These parts of the laws are problematic. The first problem is that in certain situations, access to an inmate should not rely on decisions by personnel of that

institution. A clear example is the situation when a visit by authorised personnel is the consequence of an inmate's complaint regarding the care provided, and particularly in case of allegations that the personnel of the institution abuses the inmates or acts inappropriately. It is unacceptable that a person who is the subject of a complaint or his/her colleague working in the same institution has the right to deny access to the complainant. In a different case, social work centre staff may need to meet the inmates who are entitled to legal guardianship, for the centre to secure relevant decisions on the care they are provided.

At the same time, both laws include the right of an inmate not to self-incriminate, and an important protection measure is also the relevant verification of competence of the inmate prior to granting access to an authorised body in case of a criminal offence where the inmate may be a suspect. The purpose of this measure is to secure that any self-incriminating statement may only be given by an inmate who understands the meaning and the consequence of such statements.

Therefore:

- If claims are related to an alleged unlawful act committed in an institution, persons authorised to investigate such claims should have access to an inmate, as that is an issue of rights. Any restriction of such access may only be ordered by a court.
- The inmate's legal counsel should also have the right of access, as well as professional staff interviewing the inmate who wishes to challenge legally the continuous detention he/she is in, or in case of a legal challenge of continuous legal incompetence of a person.
- Any person entitled by law to give legal advice on protection or treatment of an inmate currently under way should also have the right of access. Adequate rules on confidentiality of such considerations should be adopted.
- Any official person who has the duty of supervising conditions in such institutions should also have the right of access.
- Investigators looking into criminal offences the inmate is suspected or is likely to be suspected of may have the right of access only if, according to the opinion of the psychiatrist responsible for the inmate's treatment, such an inmate is capable of understanding the nature of the investigation and the meaning of all the statements he/she may make during the investigation.
- Statements made by inmates in psychiatric institutions may be admissible in court proceedings only if the court is satisfied that the inmate understood the meaning and the consequence of the statements at the time when they were given.

Recommendation 8: Section 20 of the Law on Care For Persons with Mental Impairments (FBiH) and the Law on Protection of Mentally Disordered Persons (RS) should be amended (1) to ensure a right of access to the beneficiary of officials investigating alleged wrongdoing in the facility; and (2) to ensure that persons providing self-incriminatory statements to investigators understand the nature and effect of those statements.

2.4. Applicants submitting proposals to courts for discharge from a health institution

In the first line of the first paragraph of Article 40 of both laws, the world 'may' is to be replaced by 'shall'.

In Article 40 of the FBiH law the words 'his/her guardian' should be followed by the phrase 'health care institution'.

The second paragraph of Article 20 of the RS Law is to be deleted.

Justification:
Article 40 allows a number of designated parties to submit applications to the court, but the FBiH Law does not mention the relevant medical doctor treating the patient, and this possibility is now added by adding the reference to a health care institution. This change established a legal obligation for health care institutions to address courts and request termination of detention if the inmate's health state no longer requires such a measure.

The second paragraph in the RS Law is to be deleted since only a court may make such a ruling. A court decision may also be changed only by a court, and not by merely informing a court, as it currently reads. That is why the second paragraph is considered redundant and should be deleted.

Recommendation 11: Processes should be put in place to make effective the right of beneficiaries to apply to court for early termination of their confinement orders.

Recommendation 12: The treating psychiatrist of any confined person should be required by law to apply to the court for a termination of that confinement, when the beneficiary's health no longer warrants the confinement. The law in F BiH should be amended to provide jurisdiction for such applications.

2.5. The right to vote

Point 3 should be added to Article 11 of the FBiH Law, and point 15 should be added to Article 12 of the RS Law, to read:
'to vote in accordance with the law.'

Justification:
Removal of legal competence should only be issued when the exercise of the rights removed is detrimental to the person who is legally incompetent. It seems that the right to vote should not have such an effect.

Article 3, Protocol I to ECHR obliges member states to conduct free elections within reasonable intervals, by means of secret ballot, 'under conditions which shall secure free expression of opinions in the manner as prescribed by law'. Although it does not secure explicitly the right of citizens to vote, Principle 3(2) of Recommendation R99(4) by the Committee of Ministers concerning legal protection of incapable adults emphasizes that a protection measure does not automatically lead to the person's loss of the right to vote.

The right to vote should thus be extended to persons in psychiatric and similar institutions, where appropriate administrative mechanisms should be established in order to ensure that persons in such institutions may exercise this right.

Recommendation 16: People in psychiatric hospitals, social care homes, and similar facilities should have the right to vote.

2.6. Period of commitment to a health care institution

2.6.1.
In the FBiH Law, Article 33, paragraph 1, the phrase 'one year' is to be replaced by the phrase 'six months'.

Justification:
The law allows for involuntary commitment to a health care institution for up to one year (FBiH) or six months (RS), but it also states that this period is followed by a mandatory review of involuntary commitment; the inmate or other persons involved in the process may request an earlier court review, but both periods are longer than acceptable. The proposal is also that the change in the FBiH Law will bring both provisions to an equal duration of 6 months.

2.6.2.

In Article 34 of both laws, in the first line, the word 'set' should be replaced by the word 'assess'.

In Article 34 of the RS Law, number '7' should be replaced by number '10'.

In Article 34 of the FBiH Law, a new sentence should be added at the end: 'The court may decide on an extension in intervals not exceeding 6 months'.

In Article 34 of the RS Law, the word 'placed' is followed by a full stop, and the rest of the sentence should be deleted. That is followed by the following sentence: 'The court may decide on an extension in intervals not exceeding 6 months.'

Justification:
The word 'set' is to be replaced by the word 'assess' as it is more appropriate, since the health care institution does assess whether the involuntarily committed person is to remain there after the expiry of the initial involuntary commitment.

It is also suggested that deadlines for submitting proposals for extension to competent courts should be harmonised in both laws to a period of 10 days prior to expiry of the period.

It is also suggested that when ruling on an extension of involuntary commitment they court may only prescribe intervals of no more than six months. Such a decision also includes a possibility for the court to extend the commitment again, provided there is an assessment to that effect by the health care institution.

2.6.3. It should also be examined if the proposal for six months requires an amendment of relevant provisions in both laws on extra-judicial proceedings.

2.7. Other

2.7.1.

In Article 15 of the FBiH Law and Article 16 of the RS Law, in the last paragraph, the word 'psycho-surgery' should be followed by a comma and the word 'sterilisation'.

Justification:
Both laws prohibit castration and there is no reason not to include sterilisation. It probably makes sense to state so explicitly.
Recommendation 19/2: The following amendments should be considered for the Law on Care for Persons with Mental Impairments (FBiH) and the Law on Protection of Mentally Disordered Persons (RS):

- Art 15 (F BiH) and 16 (RS): consistent with the intent of the articles, include a prohibition of sterilisation

2.7.2. Testing

Article 16 of the FBiH Law refers to clinical trials of medications on persons with mental disorders, and Article 17 of the RS Law refers to biomedical research, and both laws should be harmonised with the BiH Law on Medication and Medical Treatment in BiH.

Justification:
The Medication and Medical Treatment Agency of BiH controls clinical trials in compliance with the Law on Medication and Medical Treatment, as well as relevant regulations and guidelines. Therefore, both laws under consideration here should be harmonised with the state law, particularly in the part referring to clinical trials and clinical trials committees.
Recommendation 19/3**:** The following amendments should be considered for the Law on Care for Persons with Mental Impairments (FBiH) and the Law on Protection of Mentally Disordered Persons (RS):

- Art 16 (F BiH) and 17 (RS): clarify who is responsible for approval of proposed research, and ensure that he or she is appropriately trained.

2.7.3. Next of kin

Another paragraph is to be added to Article 36 of both laws:
'Next of kin referred to in the first paragraph of Article 36 is as person determined solely in this the following order:

- married spouse, common-law spouse,
- children of legal age, adopted children,
- parents or adoptive parents,
- siblings of legal age,
- grandparents,
- grandchildren of legal age.'

Justification:
A more precise definition of next of kin is proposed in order to avoid any dilemmas.
Recommendation 19-4: The following amendments should be considered for the Law on Care for Persons with Mental Impairments (FBiH) and the Law on Protection of Mentally Disordered Persons (RS):

- Art 36 (F BiH and RS): consider whether a more specific definition of 'close relative' might be appropriate, and determine a process whereby information does not need to be provided when the beneficiary would object to such disclosure.

2.8. Institutional advocacy

In relation to providing a system of independent advocacy of interests of inmates living in institutions, it is suggested here that the competent authorities of both FBiH and RS consider the possibility of introducing them in legislation and practice, as this is an entirely new legal category.

Justification:
The essence of human rights is not just in legal wordings, but also in the real effects of those phrases on the lives of individuals and groups. However, in order to make it work, mechanisms need to be established to draw the attention of the competent authorities and of courts, when necessary, to examples where standards are not being met. In that respect, employing persons to advocate the inmates' interests, particularly in larger facilities, is generally accepted as good practice and a form of appropriate primary assistance for persons in those institutions.

There are different models of such advocacy. One example is for advocates to work at psychiatric institutions explicitly to establish precedents for court proceedings, and particularly precedents related to human rights, as urgent cases. Persons who conduct legal supervision do not necessarily have to be lawyers.

Another model is advocacy on behalf of inmates/counselling on rights, as applied in Ontario, Canada, and considered to be more appropriate for the situation in BiH. This should be developed within the local contexts in FBiH and RS respectively, as it is not a matter of setting precedents, but rather providing advocacy services to persons committed to psychiatric institutions.

In general, an advocate of inmates' rights maintains an office in the psychiatric institution and an inmate who is displeased with his/her care or ahs other administrative problems may approach them. If the inmate is in a locked ward, the advocate visits him/her in the ward. The advocate discusses the problem with the inmate. Should the inmate wish so, the advocate may present the problem to the staff of the institution. In case of problems requiring legal proceedings, a lawyer may be engaged for the inmate, but the advocate does not represent inmates in court proceedings. We would like to underscore once again that neither the counsellor nor the advocate have to be lawyers.

Advocacy does not benefit only the inmate: it also has potential benefits for the staff of the institution. Tensions between staff and inmates often arise from poor communication. An advocate may deal with such problems. The advocate may

examine and explain staff actions that the inmate may misunderstand as malicious. Problems related to care, when an inmate and a staff member think the same, but the actual problems have been imposed by external administration, may be resolved in a similar fashion. And cases of staff being unfairly suspected of ill-treating an inmate may be examined by an independent individual, whose independence and advocacy on behalf of inmates gives him/her the credibility an employee of an institution does not have.

When introducing this category, the following criteria need to be satisfied:

- Advocates must be located at major psychiatric institutions, but they must not be paid by those institutions. Independence and appearance of independence from such institutions and their staff is the key to success of advocacy programmes.
- The programme must receive adequate and regular funds from government sources.
- Advocates should be organised at state or entity level. In order to be successful, an adequate number of advocates are required, so as to develop a culture of advocacy, leering form their own successful strategies as well as mistakes. They do not require a large central administration, but they do need some central authority.

Recommendation 22:
A system of independent advocacy for beneficiaries living in institutions should be provided. This programme should be organised to ensure its independence, and funded in an adequate and stable manner.

2.9. Financing

Together with the ministries of finance, the relevant ministries should find adequate financing models, in order to secure that there is adequate financing and that standards are met. Adequate financing of services is of key importance for adequate implementation of legislation and for achieving the relevant standards of observance of human rights.

Justification:
Adequate financing is essential for achieving the relevant human rights standards and for meeting the CPT standards. It is acknowledged that there are institutions that are still below the CPT standards. In relation to this, the following should be noted:

(i) Financing of mental health services should be adequate to secure the observance of institutional standards of care, such as those set by the CPT. These standards are not optional: they arise from international law and are part of an international agreement that BiH is the signatory to, i.e. the European Convention for Prevention of Torture and Inhuman or Degrading Treatment or Punishment, that BiH has ratified.

(ii) In addition to this minimum, we also note the conclusion of the World Health Organisation (WHO) that the internationally registered level of mental disorders, amounting to 12% of the Global Burden of Disease, may rise to 15% by the year 2020. (WHO 2001 World Report, pp. 23, 77.). As this is an issue of the burden of disease and in compliance with

the WHO approach, mental health services should receive 12% of the total health care budget, with an increase to 15% by 2020.

Recommendation 23: Adequate funding to ensure that all mental health facilities meet the standards of the CPT. Such funding must be provided as a matter of urgency.

Recommendation 24: Funding to mental health services should match the WHO guideline of 12% of health funding, rising to 15% by 2020.

Recommendation 25: In the revision to the health insurance scheme anticipated in the near future, insurance providers should be required to fund mental health needs to a degree that reflects the realities of psychiatric care and treatment.

Recommendation 26: Unless health insurance becomes universal for all citizens, appropriate funding mechanisms must be put in place for the mental health needs of those without insurance.

2.10. Independent inspection

Article 53 of the FBiH Law and Article 55 of the RS Law prescribe that inspections are to be conducted by health inspectorates, defined in the FBiH Law on Health Care, Articles 133 – 144 and the RS Law on Health Care, Articles 88 – 90.

Neither the two laws on health care nor the laws or mental health prescribe that health inspectorate reports are public, i.e. published and publicly available. It should also be noted here that BiH will have to devise provisions to allow adequate constant and systematic supervision over such institutions, and to authorise individuals to improve sub-standard care and conduct routine inspections. The same applies to meeting the CPT standards. We therefore suggest that independent inspections be organised at state or entity level, rather than at local level.

Also, independent inspection and its work in the area of mental health should be defined by separate rules, in compliance with the CoE recommendation concerning protection of human rights and dignity of persons with mental disorders, Articles 36 and 37.

Recommendation 1:
An effective and comprehensive system of inspection must be instituted throughout BiH to ensure compliance with human rights standards. Such inspections must be periodic, and performed by individuals with appropriate from the government authorities responsible for the institutions. The reports of these inspectors must be published.

2.11. High security facilities and forensic institutions

To facilitate enforcement of security measures and other forms of psychiatric treatment, in compliance with positive legislation in criminal and extra-judicial legislation in BiH, as well as legislation on health care and social protection in BiH, the Council of Ministers of BiH, the FBiH Government, the RS Government, Government of the Brcko District and the Clinical Centre of East Sarajevo entered the 'Agreement on Placement and Remuneration for Enforcement of Security Measures Delivered in

Criminal and Other Proceedings Which Include Security Measures', published in the Official Gazette of BiH no. 89/09 of 16 November 2009.

Since the Government of the Brcko District and the Council of Ministers of BiH are signatories of this Agreement, remarks under items 13 and 14 of this document are all the more important.

Justification:
This Agreement will resolve the issue of an adequate high security facility in FBiH as well as at the level of the state and the Brcko District, which will all use the services of the Special Institution for Forensic Psychiatry at Sokolac. The Agreement will facilitate the completion of reconstruction of the existing facility in compliance with CPT standards and the establishment of the Special Hospital for Forensic Psychiatry at Sokolac, regulating at the same time the conditions of placement, treatment, stay and care for persons in relation to whom there has been a security measure of mandatory psychiatric treatment, treatment for substance addiction or other measures requiring placement in this hospital. It is very important that there is an institution for such inmates that does meet the CPT standards, irrespective of which part of the country such persons may be from. This also requires changes to certain other laws.

Recommendation 27:
One or more appropriate high secure and forensic facilities must be made available to ensure appropriate care is available for persons in need of such facilities throughout F BiH and RS.

2.12. Novelties in criminal procedure legislation

In the FBiH Law, Chapter VII, Treatment of persons with mental disorders under criminal proceedings, and the RS Law, Chapter VII, Treatment of persons with mental disorders under criminal or misdemeanours proceedings, Articles 43 and 44 should be changed and harmonised with the FBiH Criminal Procedure Code, Chapter XXIX, Procedures for applying security measures, forfeiting gains from criminal offences and recalling suspended sentences, and the RS Criminal Procedure Code, Chapter XXIX, Procedures for applying security measures, forfeiting gains from criminal offences and recalling suspended sentences.

Justification:
Both laws have entered changes in this area related to persons with mental disorders, and such changes should be incorporated in the two laws on persons with mental disorders, as well as the two laws on extra-judicial proceedings.

2.13. Issues related to legislation in the Brcko District

The suggestion is that the Brcko District should draft legislation on mental health in compliance with international standards, and entity laws and proposals contained in this report may serve as a good starting point.

Justification:
The Brcko District does not have a set of laws parallel to those in the entities Instead, all their laws related to non-criminal detention in hospitals, legal competence and

guardianship are contained in the Law on Extra-judicial Proceedings of the Brcko District, published in the Official Gazette in May 2001. Compared with parallel legislation of the entities, this law is rather superficial and it offers very little protection in relation to placement of individuals in such institutions.

Recommendation 13: Brcko District should draft mental health legislation consistent with international standards.

2.14. State level legislation on enforcement of the security measure of mandatory psychiatric treatment or substance addiction treatment in institutions for enforcement of criminal sanctions, detention and other measures in BiH [56]

As for state level Rulebook, the suggestion is that the Rules should be changed in compliance with the justification and recommendations 14 and 15 of the 'Analysis….'

Recommendation 14: The provision of security measures sentences pursuant to criminal sentences should only occur in a hospital. Such measures should not be provided in a prison.

Recommendation 15: Prisoners whose condition requires admission to a psychiatric facility outside the prison should continue to serve their sentence in that facility. Such a sentence should be suspended during hospitalisation only if the prisoner has pretended to have a mental illness in order to be removed to the hospital.

2.15. Family legislation

Section IV of the FBiH Family Law regulates the issue of guardianship, and the RS Law does so in Section V. In light of the following, these laws should be examined in light of possible changes.

2.15.1. Article 181 of the RS Law and Article 167 of the FBiH Law

It is not quite clear whether partial guardianship may also apply to persons placed in institutions. It seems that Article 167 and Article 181 require full guardianship over persons thus admitted. But it is also possible that such persons maintain some or all of their mental faculties. In such cases, not only do such persons perceive full removal of legal competence and full guardianship as humiliating, but it can also hamper their successful reintegration into the community. The purpose of Articles 167 and 181 should be clarified, and if they do require full guardianship over persons admitted to institutions, then they should be abolished.

Although provisions on guardianship in FBiH and RS may not as flexible as they can be, they do contain the key criterion provided for by Principle 3 of Recommendation R(99)4[57]: partial guardianship is permitted in cases when a person does have the capacity to make some decisions, though not all (see FBiH Article 192 and RS Article 209).

[56] Official Gazette of BiH, No. 65/05
[57] Recommendation R (99) 4 concerning legal protection of incapable adults.

It is thus recommended that those involved in determining legal competence may only order a full removal of legal competence when this is proved to be justified. More often than not, special attention is due in cases of partial guardianship.

Recommendation 28: Those involved in the determination of legal capacity should only order a complete removal of legal capacity when it is demonstrably justified. Partial guardianship orders should be given much more frequent consideration.

Recommendation 29: Art 167 of the Law concerning Persons with Mental Impairment (F BiH) and the Law concerning Protection of Mentally Disordered Persons (RS) should be amended to ensure that persons admitted to institutional care do not need to be subject to plenary guardianship.

2.15.2. Managing guardianship

As for deprivation of liberty, it is particularly challenging to ensure the relevant standards in executing guardianship duties. Numerous other decisions by a guardian, particularly a guardian with full powers, have major impact on the life of an individual. Sale of property is a clear example of this, but there are certain restrictions in the right of the guardian to sell property, referred to in Articles 177 and 179. However, in a wider sense, it is unclear how thoroughly a guardian's decisions are examined and what role, if any, the inmate has in challenging certain decisions (which is different form the actual awarding of guardianship).
It is suggested that an inmate should have the right to challenge a guardian's decision only with court approval.

Recommendation 30: Provisions should be introduced allowing an individual subject to guardianship to challenge the decisions of his or her guardian, with leave of the court.

Since social work centres play an important supportive role in numerous areas of the mental health protection system, these centres should be provided with adequate and regular funding.

Recommendation 31: Centres for Social work provide essential support in many areas of the mental health care system. These centres must be given sufficient and stable resources.

2.15.3. Deprivation of liberty of legally incompetent persons

This is an issue of *de facto* deprivation of liberty of legally incompetent persons in a hospital or a similar institution, on the basis of authority of the guardian or another replacement deciding authority. The 2001 FBiH Law deals with these issues in Articles 10 and 41, and the 2004 RS Law does so in Articles 11 and 41.

Laws in both entities indicate that the guardianship system is expected to secure the framework for such institutional placements. There is much in these provisions that may prove to be useful in relation to this issues. Thus, the guardian is required to submit annual reports on inmates under his/her care, and guardianship authority – usually the relevant social work centre – is required to consider such reports in detail

(FBiH Article 180 and RS Article 196). When selecting a guardian, the inmate's opinion is taken into account.

There are certain difficulties in relying on the guardianship structure as it stands at the moment. In order to satisfy the standards set by ECHR Articles 5 and 6, it must be subject to decisive and well-defined principles, including professional medical opinions and the application of protection measures, in order to secure observance of substantive provisions. First of all, current legislation provides no substantive guidelines for guardians as to when a client may or should be admitted to an institution. The guardian has a very important duty of acting in the best interest of his/her ward (FBiH Article 165 and RS Article 179), but there is no further reference as to when deprivation of liberty may be appropriate. Furthermore, there is no control to determine how conscientious the guardian is in fulfilling his/her obligations. For example, there is no clear definition of the issue of routine visits by the guardian, or any verification of thoroughness of the annual reports. Although there is no question as to the conscientious performance of social work centres, there is a fairly widespread opinion that they do not have the adequate resources to secure considerable protection measures in such cases. It is also unclear as to how a ward that may disagree with a decision related to him/her may challenge such a decision, as set by Article 5. Of course, a ward may challenge the entire finding on incompetence and request the guardian to be removed: however, this is not the same as challenging the appropriateness of the guardian's decision.

For that reason, it is recommended to adopt improved criteria and procedural measures of protection, in order to ensure that there is justification for placement of legally incompetent persons in psychiatric institutions, social protection institutions or similar facilities.

Recommendation 4: Throughout BiH, enhanced criteria and procedural safeguards should be put into effect, to ensure the appropriateness of admission of persons lacking capacity to psychiatric facilities, social care homes, and similar facilities.

2.16. Legislation on extra-judicial procedures

2.16. 1. Restriction of civil rights

Since the proposal suggests changes in Article 11 of the FBiH Law and Article 12 of the RS Law, there should be a corresponding change in the last paragraph of Article 46 of both laws on extra-judicial proceedings, since only a court may restrict civil rights, and a health care institution may only make a proposal to that effect.

A mentally disordered person has the right of appeal such a ruling by a court.

Persons with mental disorders must enjoy all civil and political rights. Any restrictions in relation to those rights must be in compliance with provisions of ECHR and must not be based solely on the fact that the person in question is mentally disordered. At that, one should also take into account the Recommendation R(2004)10 by the Committee of Ministers to member states concerning the protection of human rights and dignity of persons with mental disorders.

The law should also define the right of persons with mental disorders to legal representation.

2.16.2. Article 56 of the FBiH and the RS Law on Extra-judicial Proceedings lists persons who may submit a motion to the court, though not including the doctor in charge or the health care institution where the mentally disordered person is placed.

Since there is a proposal to change Article 40 of the FBiH Law so that a health care institution may become the proponent, as already set by the RS Law, there is a proposal to harmonise both laws on extra-judicial proceedings accordingly.

2.17. Issues of criminal law (to be taken into account by the Ministry of Justice and the commission preparing changes and amendments to criminal legislation)

The Council of Europe undertakes to submit this section to the above institutions.

We suggest that the following recommendations be incorporated into current legal (criminal) provisions:

'The court that delivered the security measure of mandatory psychiatric treatment or substance addiction treatment shall decide every six months on the need for further application of the security measure.'

'Prior to such a decision, the court shall obtain the opinion of the institution where the security measure is being enforced and the opinion of an expert witness – psychiatrist who is not employed by the health care institution where the security measure is being enforced, on the necessity of further application of the security measure. Prior to giving an opinion, the expert witness is obliged to examine the person subject to such a measure in all cases.'

'The court shall suspend the enforcement of a security measure if, on the basis of the opinion of the health care institution where the security measure is being enforced and the opinion of the expert witness who is not employed by that institution, it finds that the reasons for further application of the security measure have ceased to exist.'

'Upon proposal by the person in relation to whom the security measure has been delivered, the health institution where the security measure is being enforced, the guardianship authority, the legal counsel, spouse or common-law spouse, blood relation of the first line, a sibling, adoptive parent or adopted child, or the lawyer of the person in relation to whom the security measure has been delivered, the court shall conduct proceedings to decide on further enforcement of the security measure.'

'In the process of deciding, the court shall act pursuant to paragraph 2 and shall suspend the enforcement of the security measure if, on the basis of the opinion of the health care institution where the security measure is being enforced or the opinion of an expert witness not employed by that institution, it finds that the reasons for further application of the security measure have ceased to exit. If the court rejects a proposal to terminate the enforcement of a security measure, the applicant may lodge an appeal with a court of higher instance.'

‘In case that a security measure is enforced along with a prison sentence, the health care institution where such a measure is being enforced is obliged to submit to the court that delivered it, 30 days prior to the expiry of the sentence, an opinion on the reasons why there may still be a need to continue the psychiatric or substance addiction treatment, due to the possibility for the inmate’s health condition or addiction to lead to the commission of another offence, or an opinion on reasons why there is no longer any need to continue psychiatric or substance addiction treatment.’

‘When a court has found, on the basis of an opinion of the health care institution where the security measure is being enforced and an opinion of the expert witness not employed by that institution, that the inmate’s health condition or addiction may lead him/her to the commission of another offence, the court shall decide that the security measure has ceased and shall order involuntary placement in the health care institution for a period not exceeding six months. Alternatively, it will decide on the termination of the security measure.’

‘As a rule, proceedings to decide on suspension of the security measure or termination of security measure and involuntary placement in a health institution following release form prison, are closed to the public. This does not apply to legal representative and the lawyer of the person in relation to whom the security measure has been delivered. In all cases and inasmuch as it is possible and not detrimental to the health of the person in relation to whom the security measure ahs been delivered, that person shall also be heard.’

‘When a security measure is enforced along with a suspended sentence and if such as person fails to undergo treatment or refuses the mandatory treatment, the health care institution where it is being enforced shall report this fact immediately to the court that delivered the measure. In such a case, the court shall recall the suspended sentence and the security measure will continue to apply, along with a prison sentence. Paragraphs 6, 7 and 8 shall apply to such situations.’

‘In case that the mental state of the person in relation to whom a security measure has been delivered and is enforced along with a prison sentence deteriorates to such an extent that it jeopardises or may jeopardise life, health or security of other persons and indicates a need for hospitalisation, the health care institution where the security measure is being enforced shall apply immediately the procedure of involuntary hospitalisation as prescribed by the RS Law on Protection of Mentally Disordered Persons or the FBiH Law on Care for Persons with Mental Impairments.’

‘In such a situation, following the procedure prescribed by law, the court shall determine if the period of security measure has expired and decide at the same time on involuntary hospitalisation at a health care institution for a period not exceeding six months.’

‘Conditions are to be created so that a court submits an accused whose mental disorder leads to a finding of no liability to extra-judicial proceedings immediately, in order to be held in a psychiatric institution. If the security measure is still in force at expiry of a sentence, a process is to be established whereby the court can be informed in advance and the person transferred involuntarily via extra-judicial proceedings.’

Recommendation 17: A defendant who is found as a result of mental disability to be entirely without responsibility should be able to be subjected immediately by the court to the extra-judicial procedure for psychiatric confinement. When security measures are still in force at the end of an individual's sentence, a process should be put into place to notify the court in advance, and for the individual to be admitted compulsorily using the extra-judicial procedure.

'The court which delivers a security measure together with a sentence must have an obligation to review periodically, every six months, the need for such a measure. The person in relation to whom such a measure has been delivered and his/her immediate family or legal representatives should also have the possibility to request a review of the need for continuation of such a measure.'
Recommendation 18: The court including security measures in a sentence should be required to re-evaluate the need for those measures on a periodic, six-monthly basis. The person subject to such security measures, or is or her family or legal representative should also be able to apply for a review of the need for the continuation of such measures.

2.18. Good international practice

Improvement of community-based protection

Internationally, the focus of protection of persons with mental health problems and learning disabilities is moved from large institutions to community-based care (see, for example, WHO, 2001, pp. 40-54). This is also provided by FBiH and RS legislation.

The fact is that upon discharge from psychiatric hospitals, many persons return to the care of their families, but many of them also go to large institutions such as social care facilities, which very few leave.

There is an international debate as to whether it is really possible to make any savings by providing good community-based services. There is almost no doubt that good community-based services do not cost more than institutional care, but that they provide better quality of life for the clients.

There is, however, a practical issue: where will the individual live after leaving an institution. It seems that poorer families are reluctant to accept their family members or relatives with mental disorders for financial reasons: at least initially, such a person is a considerable financial burden as he/she has no employment and thus no income to contribute. In such situations, we believe that it would be advisable to consider a form of social support to the family, corresponding to the cost of care. We suggest the establishment of a system of small payments that would reflect the cost of care for such persons by their own families, allowing families with modest income to provide care for their mentally disordered relatives.

Some form of accommodation with appropriate social support should be provided for persons who are unable to live with their families.

We thus propose the establishment of clear procedures to ensure efficient communication among mental health centres, institutions releasing individuals into the community and social work centres.
Recommendation 20: Clear procedures should be developed to ensure effective communication between mental health centres, institutions discharging beneficiaries into the community, and centres for social work.

Recommendation 21: A system of small payments should be developed to reflect the costs of care of beneficiaries in their families, to enable families of modest means to care for their mentally disabled loved ones.

III. CONCLUSION

The intention behind this report is to assist as much as possible the competent authorities in harmonising the relevant legislation concerning persons with mental disorders and other relevant laws with the requirements of international legislation and practice, all aiming to improve and upgrade legal framework in accordance with the principles of protection of persons with mental disorders. Of particular importance in this context is the European Convention on Protection of Human Rights and CoE recommendations mentioned throughout this document. Similarly, CPT reviews treatment of persons with mental disorders and visits establishments in which they have been placed.

Having in mind that working with persons with mental disorders is a difficult task, in particular for persons in direct contact with them, it is all the more important that there are also suitable legal solutions which assist both the staff and persons with mental disorders. At the same time, it is well known that any areas, including the area referring to persons with mental disorders, constantly develop. This development should be followed by the development of the appropriate legal framework.

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"Efficient Prison Management in Bosnia and Herzegovina"

V. INFORMATION MANAGEMENT SYSTEM

INTEGRAL INFORMATION SYSTEM FOR THE PRISON SERVICE IN BOSNIA AND HERZEGOVINA

Guidelines for preparation of tender documents

Sarajevo, October 2009

This document is prepared by „Djikić Software Development“ for the purpose of the project, and it is continuation of previous projects of Council of Europe[58] in the field of information management system.

djikic software development

[58] The project funded by CIDA and implemented by the Council of Europe „Professionalizing and harmonization of prison system in Bosnia and Herzegovina, document „Integral Information System for the Prison Service BiH“, December 2008

CONTENTS

I. ACTIVITIES TOWARDS IMPLEMENTATION OF INTEGRAL INFORMATION SYSTEM FOR THE PRISON SYSTEM IN BOSNIA AND HERZEGOVINA[59]

Activity 1: Design of integral information system of the prison system in Bosnia and Herzegovina (hereinafter IIS)

Phase 1 – project proposal preparation – review of the current situation, proposal of the implementation plan and project design (it is implied that the Service Provider will conduct a field mission to review the current applications in the prison system for the purpose of integrating them in the existing system). The Service Provider should take into account the problems encountered by some users with regards to online connectivity, as well as how these users will connect to the centralized database. The Service Provider should also have in mind the necessary exchange of information with other segments of the prison system, the responsible ministry, related services and other authorized users. Main processes that comprise the IIS should be reviewed once again with the users (maximum deadline 4 months).

Phase 2 – The Implementation Team adopts the implementation plan, system design and design technology (maximum deadline 2 months)

Phase 3 – development of applications, software production per the approved design and technologies (maximum deadline 12 months)

Result: the Service Provider has analyzed the current situation, made a proposal of implementation plan and system design, which were adopted by the Implementation Team. Based on that endorsement, a software was designed and adapted per the approved design and technologies

Activity 2: Testing, correcting and modifying the software

Phase 1 – Service Provider prepares the testing plan on pilot units; the plan is approved by the Implementation Team (maximum deadline 20 days)

Phase 2 – The system is tested on select users in the prison system of BiH as planned, errors are corrected and required modifications made (maximum deadline 6 months)

Result: Based on the testing plan prepare by the Service Provider and the approval of the Implementation Team, the system was tested on select users, after which the necessary corrections and modifications were made.

[59] "integral information system" – a system containing all components necessary to perform a specific, complex task

Activity 3: System implementation on locations and user training on system use

Phase 1 – Service Provider prepares the specifications for hardware and system software for the central locations, to match the requirements of the software produced (maximum deadline 1 month)

Phase 2 – Procurement and installation of hardware for central locations. The Investor will procure hardware separately, and the Supplier will conduct the necessary installation (maximum deadline 2 months)

Phase 3 – Service Provider installs software on central locations. Service Provider shall install software once hardware is supplied and installed (maximum deadline 1 month)

Phase 4 – Service Provider prepares a training plan, to be adopted by the Implementation team (maximum deadline 1 month)

Phase 5 – Training of users and support team (maximum deadline 3 months)

Phase 6 – Maintaining the system operation, support to users and additional remedy of possible errors (duration: 12 months)

Result: The Supplier has installed the procured hardware, according to the specifications provided by the Service Provider. The Service Provider installed the software on central locations, trained users and has provided regular maintenance services for a period of 12 months.

II. PROJECT MANAGEMENT

The project is managed by the Implementation Team, comprising:

- a project manager,
- CoE representative,
- as well as representatives of responsible ministries and prison service for all four levels,
- IT expert and
- a legal expert.

This team shall cooperate closely with the Service Provider's team, covering the following tasks:

a) Adopting the system design and implementation plan
b) Adopting the proposed testing system
c) Adopting the training plan
d) Assisting in project implementation in each phase
e) Resolving potential problems that arise during implementation

The Implementation Team bears overall responsibility for the project management, which will cooperate with the Council of Europe to manage project implementation in the sense of reviewing and approving quarterly reports and final report.

III. LOCATIONS AND DEADLINES

Locations
The project shall be implemented in Sarajevo, Banja Luka, Brcko, Mostar, as well as in other localities should there be a need and in those locations designated by the Investor.

Starting and End Date
The expected start of the implementation is the day Service Provider and Investor sign a contract. The anticipated duration of project implementation is 24-30 months.

IV. REQUIREMENTS

- **Staff**

The selected bidder is to ensure a team of experts that will fulfill the requirements of this project, and that will also possess a minimum of the following requirements:

Expert 1: Team Leader

Qualifications and Experience:
- University degree in the field of electrical engineering or computer science
- At least five years of experience as a consultant or staff member in a successful national, regional or international projects on IT development in managing databases
- At least one year of experience as project manager for IT projects.

Expert 2: IT Systems and Applications Development Expert

Qualifications and Experience:
- University diploma in the field of technical science, IT or business administration
- At least five years of professional experience in design, development and maintenance of information systems and application software
- At least three years of experience in training beneficiaries.

In addition, the Service Provider should have a programming team of at least three (3) programmers that will be involved in the project.

Other experts

The Service Provider (company) shall select and recruit a legal expert, as required by the project, possessing the necessary knowledge on the prison service legislation. This is to ensure complete compliance of the software with the necessary legal regulations. The Service Provider will also recruit short-term experts who will work for a specific number of days. The Service Provider is responsible for the selection and payment of additional consultants. The Investor shall not have additional responsibilities for paying them.

Support Staff

The Service Provider will ensure the availability of support staff.

- **Office Space**

The implementing partner will ensure reasonable standard of office space for every contracted expert. The Investor will ensure office space for implementation team members.

- **Resources to be Ensured by Implementing Partner**

The Implementing Partner will ensure adequate support and equipment to the experts. That includes administrative and translation services so that experts can perform their primary tasks without interruption.

Incidentals

Incidental costs cover additional and extraordinary justified costs that may occur as a result of the project. The resources earmarked for incidental costs cannot be used for the costs that should be covered by the Consultant and that derive from activities listed in this document. The implementation team will approve compensation of incidental costs once the Implementing Partner submits a written request. The Implementation Team has the discretionary right to approve or deny compensation of incidental costs.

- **Reports**

Reporting Requirements

The Implementing Partner should prepare and submit an Inception Report three months from the day Contract is signed. The report is to be delivered for review and approval to the Implementation Team, and it should include:

- Results of preliminary research
- Priority activities and needs
- Confirmed time table and work program for project implementation

The Investor will provide the Implementing Partner all the necessary and available information for the preparation of the Inception Report in the given deadline.

Service Provider should also prepare and deliver:

- Interim Reports on the plan of activities, at the start of every next activity
- Interim Progress Reports upon completion of each activity

All Interim Reports should describe in detail:

- Planned and elaborated activities before the implementation
- Progress in project
- Obstacles encountered during implementation and proposed solutions
- Results achieved during the reporting period, funds spent, recommendations and requests and activities for the coming period

By the end of the project, the Service Provider should also prepare and deliver a Final Report, which will include:

- Analysis of completed project phases
- Results of internal evaluation
- Recommendations to ensure efficient continuation of project activities (recommendations to improve, expand, ensure etc...)

The draft Final report should be delivered at least one month before the Contract ends.
Each report should contain a narrative and financial section.

V. PROPERTY RIGHT

The Investor keeps property right over equipment, applications, documentation, forms, rulebooks, programs, future modifications, video recordings and all other data related to the Integral Information System.
The Service Provider shall deliver a bid encompassing all the necessary licensed for the system's efficient use for an unlimited number of clients (client's computers). The bid must not limit the number of server computers for which the Investor is entitled to install server system components.

VI. MONITORING AND EVALUATION

The implementation team shall monitor the project and ensure that project implementation runs efficiently and on time. The evaluation shall be done through adoption of inception, interim and final reports. The implementation team will monitor and supervise project implementation, and monitor project implementation through visits, meetings with institutions/beneficiaries and regular reports the project implementing partner will provide during project implementation.

The project will require of the implementing partner to assist in monitoring the project by providing all the necessary information. The implementing partner will be advised to provide information necessary for the monitoring in project reports.

VII. BUDGET

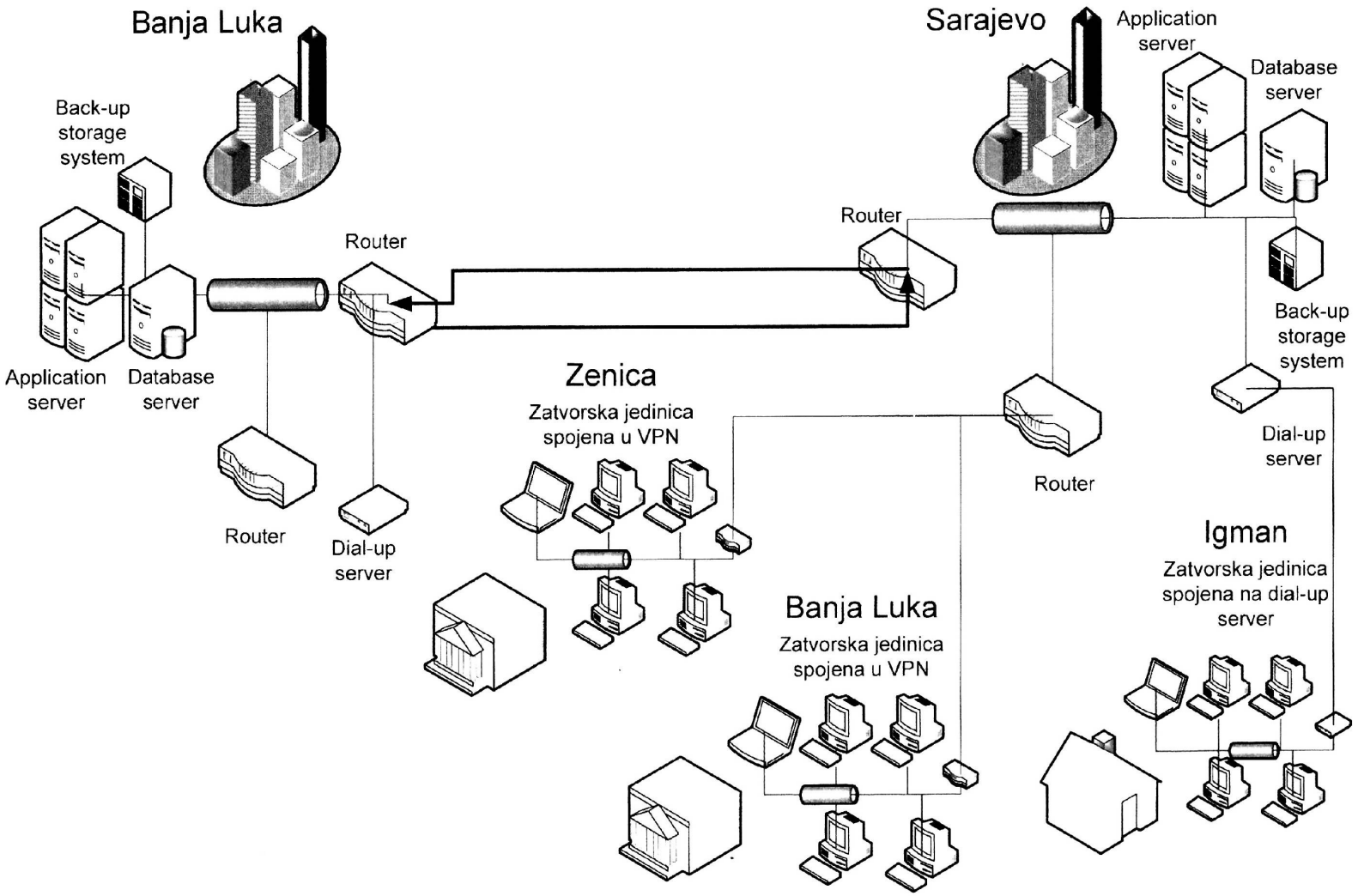
The budget anticipated for the making of this information system includes costs for software (making, adjustments, modifications), training and hardware.

DESCRIPTION	PRICES (KM)
Making software, support, *royalty free* rights to installation	1.500.000
Corrections and adjustments of software	150.000
Training	60.000
Hardware	600.000
Incidentals	100.000
Total	**2.100.000**

As you can see from the table above, software takes up the largest budget item (over 60%) in the budget. The table does not include funds to support the implementation teams' work, but they have to be known and available before the project starts.

Timeframe

It is anticipated that the development and implementation of Integral Information System for Prisons in BiH will take 36 months, plus an additional 12 months to remove any malfunctions in the system and ensure smaller modifications.


Banja Luka
Back-up storage system
Application server
Database server
Router
Router
Dial-up server
Zenica
Zatvorska jedinica spojena u VPN
Banja Luka
Zatvorska jedinica spojena u VPN
Sarajevo
Application server
Database server
Router
Back-up storage system
Dial-up server
Router
Igman
Zatvorska jedinica spojena na dial-up server

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"Efficient Prison Management in Bosnia and Herzegovina"

VI – ASSISTING IN THE DEVELOPMENT OF AN INDEPENDENT INSPECTION MECHANISM AS A FUNDAMENTAL SAFEGUARD AGAINST HUMAN RIGHTS VIOLATION IN PRISONS

MAIN GUIDELINES FOR PROMOTING INDEPENDENT INSPECTION OF PRISONS IN BOSNIA AND HERZEGOVINA

Sarajevo, April 2010

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"Main guidelines for promoting independent inspection of prisons in Bosnia and Herzegovina" is the final document of the project.

CONTENTS

Step 1

FOREWORD

This paper outlines the situation obtaining on 31 March 2010 and represents the main guidelines for further improvement of the inspection of prisons and is a result of the work of Working Group Six "Assistance in promoting the mechanisms of independent inspection as a fundamental safeguard against human rights violations in prisons in Bosnia and Herzegovina", within a Joint Project between the European Union and the Council of Europe – *Efficient Prison Management in Bosnia and Herzegovina* – implemented from 1 February 2009 to 31 July 2010, which is a continuation of work initiated within the Council of Europe (hereinafter: "the CoE") and Canadian CIDA project – "Professionalization and harmonisation of prison systems in Bosnia and Herzegovina".

We would like to welcome you to this paper designed to contribute to the development of independent inspection mechanisms, including proposed legislative solutions as well as a set of standards, indicators and anticipated outcomes that would contribute towards a better implementation of inspection in practice in Bosnia and Herzegovina and can also be of use for other bodies dealing with prison inspection.

It should also be remembered that this document is not a final document. It is a living document which can be upgraded as the needs arise or as the independent prison inspection evolves in time.

We trust that this document will serve the authorities well in the years to come.

Finally, we would like to express our appreciation to the competent ministries for their wholehearted support in this project.

I. INTRODUCTION

The joint programme of the European Union (hereinafter: "the EU") and the CoE that should promote the development of a reliable and functional prison system respecting the fundamental rights and standards sets a particular goal and a set of relevant activities contributing towards the introduction as well as furthering and consolidation of inspection and monitoring mechanisms. This activity is also related to the Strategy for justice sector reform in Bosnia and Herzegovina for the period 2008 - 2012[60] (hereinafter: "BiH").

Within the criminal sanction execution, the justice sector reform strategy in BiH foresees the establishment of an independent prison inspection system in BiH prisons, as well as the appointment of a chief prison inspector and adoption of relevant legislation.

[60] The Strategy was adopted in late June 2008 by the Council of Ministers, the entity governments and that of the Brčko District.

Thus, in the section *Independent monitoring and oversight of the prison system*, the Strategy states the following:
"Systems of independent monitoring and oversight over the prisons in BiH need to be established, to assure legislative bodies and the wider public that prisoners are being treated in line with international conventions and with full respect of their human rights. Presently only the CPT[61] and on an irregular basis the Ombudsman of BiH provides an occasional external assessment of the prison system, while international standards require governments to adopt a regular mechanism for monitoring prisons to safeguard against torture, cruel, inhumane or degrading treatment. This requires appropriate legislative changes and staffing inspectorate functions appropriately."

II. PRISON INSPECTION IN EUROPEAN COUNTRIES

Prison inspection is an important part of demonstrating compliance with this body of international standards. European countries have different models of independent prison inspection. In some countries, the ombudsperson is competent for this field, in others it falls within the competence of the judiciary. In many prison systems, certain prisons are monitored by a board of visitors. The most important point is that the inspection is performed at a high-quality level. England and Wales, Ireland and Scotland have a well-developed prison inspection system with accompanying manuals and criteria for inspecting prisons.

We will present the experience gained in Scotland here, and this country is selected because Scottish prison system experts have been involved, and still are in different projects towards the BiH prison system reform to promote the independent inspection mechanism; in addition, working group members visited Scotland and were introduced to its independent prison inspection system.

2.1. Experiences from Scotland

In Scotland there is the Chief Inspector of prisons and it is recommended that its proposed "distanced" inspectorate should be headed either by a person who was entirely independent of the civil service or by a former senior prison governor.

The Chief Inspector is assisted by a Deputy Chief Inspector, an Assistant Chief Inspector, an Inspector, and a Personal Secretary. This core team is augmented by experts from other specific areas. Other experts and lay inspectors are involved as required.

The role of the Chief Inspector of Prisons was placed on a statutory basis by the Prisons (Scotland) Act.
It shall be the duty of the Chief Inspector:

1. to inspect or arrange for the inspection of prisons in Scotland and to report to the Secretary of State on them
2. to inspect the conditions in which prisoners are transported or held in pursuance of prisoner escort arrangements and to report to the Secretary of State on them.

[61] European committee for the prevention of torture and inhuman or degrading treatment or punishment.

3. The Chief Inspector shall in particular report to the Secretary of State on the treatment of prisoners and conditions in prisons.
4. The Secretary of State may refer specific matters connected with prisons in Scotland and prisoners in them to the Chief Inspector and direct him to report on them.
5. The Chief Inspector shall in each year submit to the Secretary of State a report in such form as the Secretary of State may direct, and the Secretary of State shall lay a copy of that report before Parliament.
6. The Chief Inspector shall be paid such salary and allowances as the Secretary of State may with the consent of the Treasury determine.
7. In this section, references to prisons include legalised police cells within the meaning of section 14(1) of this Act.

Within the Scottish Prison Service there are 15 individual prison establishments and it is the aim of the Inspectorate to carry out a full inspection of each of these establishments once every three years. Each full inspection normally lasts one week. Following each inspection a report is prepared, which is submitted to the Scottish Ministers and published. In addition to the programme of full inspections, follow up inspections – which normally last one or two days – are undertaken.

Since 1985 Chief Inspector has also carried out a number of cross-cutting inspections on themes or areas of concern which are common to several prisons. The ten thematic inspections have covered issues such as female prisoners, children in prison, remand prisoners, visiting arrangements, social work in prisons, persons detained under immigration legislation and ethnic minority prisoners and staff training.
The Chief Inspector also produces an Annual Report which is presented to the Scottish Ministers and laid before Parliament.

The Chief Inspector has responsibility for the inspection of the treatment of prisoners and conditions for prisoners under escort.

2.2. The arrangements for the process and conduct of inspections.

It is expected that any inspection and subsequent report will cover:

- Physical conditions prevailing in an establishment;
- Treatment of prisoners;
- Facilities, services and opportunities available to address offending behaviour and the accessibility of these;
- Preparations in place for returning prisoners to the community;
- Any other relevant matter as the Minister for Justice may direct or Chief Inspector may choose.

The agreement listed the following:

- In carrying out inspections and in preparing reports, Chief Inspector will be independent of political influence,
- Inspections and the reports resulting from them will be balanced, fair and open.
- In inspecting and reporting upon the treatment of prisoners and the conditions within prisons, inspections will make assessments against standards which have been clearly defined.

- Strategic and relevant documentation will be provided by Governors-in-Charge and senior management to Chief Inspector on request.
- Confidential information supplied will be treated as such.
- Each inspection should be responsive to an establishment's individual circumstances.
- Chief Inspector will attempt to keep disruption to normal regime activities to a minimum.
- The inspection team will give clear oral feedback to senior management.
- A report to the Minister for Justice will be produced which will identify main points for action by the individual establishment and/or prison administration, and highlight areas of good practice.

2.3. The format of the standards

It has already been demonstrated that the standards which the Chief Inspector applies when inspecting prisons are not a matter of subjective opinion but have an objective basis. The Chief Inspector is not concerned primarily by the processes through which things are done. Instead he is concerned with outcomes, that is, what is achieved by the way Scottish prisons carry out their responsibilities.

The standards are presented in three separate sections. This division is not watertight; for example, healthcare is a matter which has great importance in all three sections and could be located in any of them; and many other matters dealt with in one section have relevance to the other two.

The three sections are:

- **Safety**
  Security, good order, protection of prisoners from harm.

- **Decency, humanity and respect for legal rights**
  All aspects of the treatment of prisoners and the framework of rights within which imprisonment should operate.

- **Opportunities for self-improvement and access to services and activities**
  The activities provided by the prison, the ethos, measures taken to solve the problems that led the prisoner into crime, preparation for release and social reintegration.

In each of these sections general principles are described and individual outcomes defined. The individual standards which will lead to the required outcomes are listed. Finally, a set of indicators to measure delivery of the standards is provided.

In developing this model, account has been taken of international and national case law and of the recommendations of intergovernmental, governmental and non-governmental committees and bodies although in many cases they are not referred to directly.

A total of nine outcomes are identified:

- Appropriate steps are taken to ensure that individual prisoners are protected from harm by themselves and others
- Prisoners are treated with respect for their dignity while being escorted to and from prison, in prison and while under escort in any location
- Prisoners are held in conditions that provide the basic necessities of life and health, including adequate air, light, water, exercise in the fresh air, food, bedding and clothing
- Prisoners are treated with respect by prison staff
- Good contact with family and friends is maintained
- Prisoners' entitlements are accorded them in all circumstances without their facing difficulty
- Prisoners take part in activities that educate, develop skills and personal qualities and prepare them for life after the release from prison
- Healthcare is provided to the same standard as in the community outside prison, available in response to need, with a full range of preventive services, promoting continuity with health services outside prison
- Appropriate steps are taken to ensure that prisoners are reintegrated safely into the community and where possible into a situation less likely to lead to further crime

2.4. The importance of inspections

Inspection and monitoring are absolutely necessary for various reasons and advantages:

- Represent best suited means for revelation of any possible shortcomings.
- Serve as effective instruments of management and prioritization based on concrete findings.
- Embody good tools for neutralizing possible outrages on personal level.
- Bear high potential of and are the best mechanisms available accentuated on playing a preventive role.
- Offer immediate opportunities for ensuring a reaction to violations or respective allegations.
- Entail positive psychological effects of meeting outsiders and affecting by inmates their own fate
- Assist in decreasing tensions and resolving conflicts between inmates and the staff or administration.
- Provide avenues for dissemination of good practices and motivating prison staff.
- Increase confidence in penitentiary systems.

Inspections and monitoring form an integral part of the **system for protecting persons who are deprived of their liberty.**

Inspections and monitoring of prisons is a process of targeted examination of different aspects of and ensuring appropriate functioning of penitentiary systems in general and respective establishments in particular, with special attention being paid to observance of human rights and legitimate interests of inmates.

Inspections are:

- Internal or external inspections
- Regular or periodic
- Special or ad hoc
- Follow up
- General
- Targeted inspections
- Announced and unannounced

III. COUNCIL OF EUROPE RECOMMENDATIONS AND CPT STANDARDS[62]

3.1. EUROPEAN PRISON RULES[63]

The European Prison Rules (hereinafter: "the EPR"), in Part VI, refer to inspection and monitoring, with Rule 92 relating to governmental inspection, and Rule 93 defining independent monitoring.

These rules intend to make a clear distinction between the inspection of prisons by governmental agencies that are responsible for the effective and purposeful spending of the allocated budget and monitoring of conditions of detention and treatment of prisoners by an independent body.

Reports by national and international NGOs, the findings of the CPT and various decisions of the European Court of Human Rights show that, even in countries with well developed and relatively transparent prison systems, *independent* monitoring of conditions of detention and treatment of prisoners is essential to prevent inhuman and unjust treatment of prisoners and to enhance the quality of detention and of prison management. The establishment of independent national monitoring bodies in addition to a government-run inspectorate should not be seen as an expression of distrust of the quality of governmental control but as an essential additional guarantee for the prevention of maltreatment of prisoners.

The Rules leave room for the various forms monitoring bodies may have. Some countries will opt for a prison ombudsman, other for a national supervising committee. Other formats are not precluded by this Rule, as long as the authorities involved are independent and well equipped to perform their duties.

Rule 92
Governmental inspection
Prisons shall be inspected regularly by a governmental agency in order to assess whether they are administered in accordance with the requirements of national and international law, and the provisions of these rules.

[62] Substantive sections of the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf/E (2020)1 – Rev. 2006
[63] Recommendation Rec (2006) 2

This Rule uses the neutral term ‘governmental agency’. This agency can be part of one ministry, e.g. the Ministry of Justice or the Ministry of the Interior, or can be an agency under the control of more than one ministry. The essential point is that such an agency or inspectorate is established by, and reports to, the highest authorities.

The ways in which governmental inspection is organised will vary from mere checking of the book keeping of prisons to in depth and on the spot audits, which take into account all aspects of prison administration and of the treatment of prisoners. What is important is that the results of these inspections are reported to the competent authorities and made accessible to other interested parties without undue delay.

These rules do not specify how planning and control systems and audits should be organized, as this is for the governmental authorities to decide.

Rule 93
Independent monitoring
1. The conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public.
2. Such independent monitoring body or bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit prisons.

In the member-states of the CoE different models of independent monitoring of conditions of imprisonment can be found. In some countries an ombudsman has powers in this respect; in other states this task is entrusted to judicial authorities, often combined with the power to receive and handle complaints of prisoners. This Rule does not intend to prescribe one single form of monitoring but underlines the need for a high quality of such independent supervision. This presupposes that these monitoring bodies are supported by a qualified staff and have access to independent experts.

It is important that the findings of these bodies, together with any observations that may have been submitted by the management of the prison concerned, are open to the public. Reports of the monitoring bodies may contain proposals and observations concerning existing or draft legislation.

Independent monitoring bodies should be encouraged to forward copies of their reports and the responses of the governments concerned to international bodies, authorised to monitor or inspect the prisons such as the CPT. This would assist these international bodies to plan their visits and allow them to keep their finger on the pulse of the national penitentiary systems. Because of their limited financial resources and the increase of the number of states to be visited, international bodies must rely increasingly on communication with independent national monitoring bodies.

In many penitentiary systems individual prisons are being monitored in some way or another by boards of visitors, consisting of (professionally) interested volunteers recruited from the community. A common approach of these boards is that its members take turns to visit the prison, talk to prisoners about their worries and complaints and, in most cases, try to mediate between the prison management and the prisoners to find solutions for perceived problems.

Though it is self evident that the existence of local boards of visitors can be a guarantee for a more intensive and involved monitoring, in small countries with only a few prisons and a small prison population independent monitoring by a national authority could be sufficient.

3.2. Specialised mechanisms of international monitoring / CPT[64]

The CPT was established by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: "the Convention") of CoE from 1987.

The CPT has been engaged in setting standards for arrangements pertaining to inspection and monitoring, as well as the application of its jurisprudence in certain countries. It holds them to be important instruments for the prevention of torture and violation of other human rights. Since the beginning of its activities, the CPT has offered a general standard in this regard, reflected in the Second General Report. Paragraph 54 states the following:

Paragraph 54
"The CPT attaches particular importance to regular visits to each prison establishment by an independent body (e.g. a Board of visitors or supervisory judge) possessing powers to hear (and if necessary take action upon) complaints from prisoners and to inspect the establishment's premises. Such bodies can inter alia play an important role in bridging differences that arise between prison management and a given prisoner or prisoners in general."

A combination of regular and ad hoc visits, confidential access to prisoners and improved independence standard in terms of submitting its findings are an important characteristic of this standard. In other words, the CPT recommends that its own different methods be used while establishing domestic mechanisms. Accordingly, it is not sufficient to foresee planned (announced) and/or unannounced inspections, but it is also necessary to strike an appropriate balance between the two.

The CPT suggests that internal inspections are not sufficient to ensure adequate protection. They should be complemented by supervision on the part of an external governmental institution integrating representatives of civil society, and by independent monitoring on the part of human rights institutions (ombudsman, etc.), as well as by involving local authorities at the level of institutions.

3.3. Specialised mechanisms of international monitoring / OPCAT

We will also mention the OPCAT[65] here, ratified by BiH on 24 October 2008. The OPCAT treaty incorporates explicit provisions and sets standards for independent monitoring. It is the most developed treaty dealing with this issue.

In addition to the international visiting body, Subcommittee on prevention of torture (SPT), the OPCAT requires each member state to establish a national (domestic)

[64] "Substantive" sections of the CPT's General Reports, CPT/Inf/E (2002) 1 - Rev. 2006
[65] The Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

preventive mechanism. Without prescribing any specific form of this mechanism, the Protocol stipulates certain obligations and principles.

IV. CURRENT SITUATION IN BiH

4.1. Governmental inspection

BiH

The Law of Bosnia and Herzegovina on enforcement of criminal sanctions, detention and other measures – consolidated text[66] (hereinafter: "the BiH Enforcement Law") prescribes, in article 46, that the monitoring of the prisons is in the competence of the Ministry of Justice, through its inspectors, who are civil servants with the status of advisors with special authority. The Rulebook on internal organisation classifies three posts of inspectors, all of which are staffed. Inspectors have no separate organisational unit, but are part of the Sector for criminal sanction enforcement and work of correctional institutions (hereinafter: "the Sector"). Its direct head is the assistant minister responsible for the Sector. In addition to inspection, inspectors are in charge of a segment of providing professional and instructive assistance to the prisons.

Article 117 stipulates that inspectors are in charge of full supervision over the work of the Pre trial detention Unit of the BiH Court. Considering that there is no prison establishment *hereinafter: prison) in BiH that would serve as a place of imprisonment and pre trial detention imposed or ordered by the BiH Court, such sentences or pre trial detention are served in entity prisons. Pursuant to the respective approvals of both entity ministries of justice, segments of the execution of prison sentences and pre trial detention in entity prisons with regard to persons sentenced or detained upon an order of the BiH Court is supervised by inspectors of the BiH Ministry of Justice. The goal of this supervision is to

- register all persons serving prison sentence imposed by the Court of BiH;
- register all persons held in pre trial detention as ordered by the Court of BiH;
- analyse the structure of the main register of prisoners and detainees;
- analyse the conditions of imprisonment and pre trial detention;
- interview prisoners and detainees with regard to problems they face while serving the sentence of imprisonment or detention;
- interview the prison staff with regard to specific problems they face while enforcing the sentence of imprisonment or measure of detention over persons sentenced to imprisonment or pre trial detention by the Court.

The supervision over the other segments of imprisonment is in the competence of the entity Ministries of Justice.

[66] Official Gazette of BiH, No. 12/10.

An inspection is followed by a written report stating inspection findings and ordering measures and deadlines for removing the identified irregularities, as well as measures for improving the work of the prison. The report is submitted to the director of the prison; the director can appeal the defined measures to the Minister of Justice. The director must follow the defined measures. While performing tasks related to inspection and supervision, the inspector acts independently and undertakes activities in accordance with the Enforcement Law and other regulations.

Article 49 prescribes that the inspector may publish the report. It does not prescribe where and how the report may be published. The printed media have so far only published certain segments of such reports that the media are interested in.

Article 47 prescribes that the supervision over the work of the prison in terms of protection and safety at work, health and sanitary protection of prisoners and detainees, and conditions and manner of preparation of food for prisoners and detainees is carried out by relevant authorities pursuant to separate regulations.

THE FEDERATION OF BOSNIA AND HERZEGOVINA

In the Federation of BiH (hereinafter: "the FBiH") still applies the Law on enforcement of criminal sanctions in the Federation of Bosnia and Herzegovina[67] (hereinafter: "the FBiH Enforcement Law") adopted in 1998. In many aspects, this law is not harmonised with FBiH legislation governing the organisation of administration, including the part relating to inspection.

According to the law currently in force, inspection is in the competence of the Sector for enforcement of criminal sanctions (hereinafter: the Sector), which is a separate organisational unit of the Federation Ministry of Justice. In terms of their work, inspectors are accountable to the assistant minister for enforcement of criminal sanctions, which to a degree questions the possibility of objective inspection, as the main function of this inspection is supervision over the implementation, or adequate implementation, of the FBiH Enforcement Law and its by-laws. The supervision includes the following: supervision of the organisation and work of prisons, treatment of prisoners, security situation and self-protection, work of the security service, implementation of health and hygienic measures, nutrition and clothing of prisoners, etc. The legislative grounds for the above mentioned inspection, carried out by inspectors as persons with special authorisations on behalf of the ministry, can be found in the provision of Article 152 paragraph 3 of the FBiH Enforcement Law. It can be seen from the above that, in terms of the work of administrative bodies, inspection as a subcategory of administrative inspection is confused with the supervision of the ministry as an authority, which should supervise certain aspects of the work of prisons.

Inspectors draft written reports on their inspection, including inspection findings as well as measures and deadlines for removing the identified irregularities, as well as measures for improving the work of the prison. The report is submitted to the director of the prison, who is obligated to observe the report and measures therein. It is possible to lodge an appeal to the minister within eight days from receiving the report.

[67] Official Gazette of FBiH, No. 44/98, 42/99 and 12/09.

The FBiH Ministry of Justice has drafted an integral version of a new Enforcement Law, which is harmonised with the BiH law.

The project of electronic monitoring of prisoners has started in the meantime. For this reason, instead of the above mentioned law, the Federation Government was submitted the Draft Law on amendments to the FBiH Enforcement Law, governing this issue. The draft law was approved by the Federation Government on 14 April 2010 and submitted for the parliamentary procedure.

REPUBLIKA SRPSKA

Certain outdated solutions in the enforcement of criminal sanctions, new circumstantial and continuous efforts to implement the EPR and other international regulations and standards, the current and anticipated structures of prison population – these are all reasons influencing the adoption of the new Law on enforcement of criminal sanctions of Republika Srpska (hereinafter: "the RS Enforcement Law"), which is expected to offer high-quality solutions for everyday difficulties and obstacles burdening the system of criminal sanction enforcement.

The new RS Enforcement Law[68] brings a number of changes in terms of the enforcement of criminal sanctions and in terms of the supervision over the work of prisons.

Attempting to build an independent and professional monitoring system within the criminal sanction enforcement system, acknowledging the Law on the RS administration currently in force and the Ordinance on the principles of internal organisation and job classification in the RS administrative bodies (the hereinafter: Ordinance), the new RS Enforcement Law devotes a whole chapter to the issue of inspection.

In accordance with the commitment to the highest possible independence of inspectors in their work, their professionalism and the application of Rule 92 of the EPR, the Enforcement Law stipulates that the supervision over the work of prisons is in the competence of the RS Ministry of Justice.

In accordance with Ordinance, the Inspection Department is part of the Ministry and acts as a separate organisational unit. The Department is managed by its head that is directly accountable to the minister. Therefore, the new Enforcement Law does not place the Department within the Sector for criminal sanction enforcement, which is yet another breakthrough towards a greater independence of inspectors in their work.

Even though the Enforcement Law does not define such organisation and the status of the Department within the Ministry of Justice, the transitional and final provisions of the Law, in Article 252, stipulate that, until the human, material and organisational requirements are met, the Inspection Department will continue its work within the Sector for criminal sanction enforcement. According to certain estimates, the Department should soon cease to be part of the Sector.

[68] Official Gazette of RS, No. 12/10.

Scientific and professional institutions may be engaged for the purpose of inspection. The supervision over the prisons in terms of their financial operation, labour relations, safety protection at work, health and sanitary protection of prisoners and detainees, and food preparation conditions are in the competence of authorised bodies in accordance with separate regulations.

The Ministry supervises the application of laws and regulations and professional work of prisons in order to establish a unified system of the enforcement of criminal sanctions, to convey positive experience, analyse and monitor the work of different services within the prison and offer professional assistance to these services.

Inspection implies the supervision over the following: working plans and programmes of prisons and their organisational units, organisation and work of security and treatment services, organisation of prisoners' registries, work of admission and release unit, implementation of treatment programmes, security situation in prison, implementation of disciplinary measures on prisoners, implementation of health and hygienic measures, situation in terms of legal and correct treatment of prisoners with the measure of compulsory treatment, implementation of conditional release, application of this law and other regulations governing the field of criminal sanction enforcement, organisation of prisoners' work, protection of prisoners' rights, implementation of the eligibility criteria for prison leaves, maintenance of the facilities, prison accommodation conditions, heating, nutrition, provision of clothing and footwear to prisoners, etc.

The head of the Department is responsible for careful supervision over the implementation of this law in all prisons, and is accountable to the minister for his work. While carrying out the inspection, the inspector acts independently and undertakes activities pursuant to this law and other regulations. The rulebook on the manner of inspection is issued by the minister.

A written report is made on the inspection, in which the inspector may order certain measures and deadlines for removing the identified irregularities and shortcomings, and can give certain recommendations as to the work improvement. In the final section of the report, the inspector offers a conclusion as to the conditions in the prison.

The report is submitted to the minister and director of the prison. A copy of the documentation subject to inspection may also be enclosed with the report. The prison must follow the ordered measures and deadlines, and should accordingly send a written notification to the Inspection Department. Should there be grounds to suspect that an offence defined in the RS Criminal Code has been committed; the inspector is obliged to notify the competent prosecutor's office accordingly.

A report on inspection, upon the minister's approval, may be fully or partially published, provided that the prison security and human rights of prisoners and prison staff are taken into account.

The ordered measures and deadlines can be appealed to the Inspection Department by the director of prison. A complaint stays the execution of such measures, except in cases when the report stipulates that they would eliminate risks to lives and health of

prisoners or property, or when it is in the interest of the prison's security. A response to the complaint can be appealed against to the minister, while the minister's decision is final.
Should, after the final decision on the appeal, the measures not be implemented within the identified deadlines, the Inspection Department can launch an initiative with the minister to consider the responsibility of the prison director.

4.2. Independent inspection

- **Independent commission**

Article 48 of the BiH Enforcement Law prescribes that the BiH Parliamentary Assembly appoints an independent commission tasked with monitoring the conditions in prisons, treatment and respect for human rights of persons subject to criminal sanctions and other measures imposed in criminal proceedings by the Court of BiH, foreign courts for offences defined in the criminal code or treaties signed by BiH or another court in accordance with BiH law.

The commission is appointed for the period of five years. It consists of five members, professionals in the field of law or a related field, such as the judiciary, administration, penology, social welfare, psychology, pedagogy or the like.

The commission may carry out external supervision over the work of the prison, independently or together with inspection or other supervisory bodies, as well as in cooperation with international and other institutions competent for monitoring and implementation of human rights and fundamental freedoms in accordance with law and other relevant international documents. Members of the commission have the same authority as inspectors of the Ministry of Justice.

The commission submits an annual report on its work to the BiH Parliamentary Assembly and the Ministry of Justice, for the purpose of undertaking adequate activities or measures in accordance with law.

A public invitation to interested candidates wishing and being competent to work in this commission was open until 17 December 2009. The selection of commission members is still ongoing.

In the FBiH, there is no such body prescribed by law. In RS, for the purpose of supervising the protection and situation with regard to human rights and conditions under which criminal sanctions and other measures imposed in criminal proceedings are enforced, the RS National Assembly appoints the Independent Commission.

The commission may supervise the protection and situation with regard to human rights and conditions under which criminal sanctions and other measures imposed in criminal proceedings are enforced in prisons, independently or in cooperation with competent inspectors or international and other institutions competent for monitoring and implementation of human rights and fundamental freedoms, in accordance with law and other applicable international documents.

The commission consists of five members – experts on law or other related fields familiar with issues relating to criminal sanction executions, who are not employed by

institutions in which criminal sanctions and other measures imposed in criminal proceedings are enforced or by the Ministry of Justice.

The commission is appointed for the period of five years, with the possibility of re-appointment. The commission adopts a rulebook on its work and submits an annual report on its work to the RS National Assembly and the RS MoJ. The Independent Commission of Republika Srpska was appointed in 2009.[69]

- **Commission for monitoring prisons**

The BiH Council of Ministers has issued a decision on setting up a commission for monitoring prisons, pre trial detention facilities and juvenile detention facilities, police stations and psychiatric institutions accommodating persons deprived of liberty against their will (hereinafter: "The commission for monitoring prisons"),[70] which makes regular visits to prisons and works towards the prevention of torture and inhuman or degrading treatment or punishment. This means that the commission is primarily of preventive and consultative nature. The commission consists of 9 members, representatives of civil servants and independent experts, as well as representatives of civil society. After each visit, the commission drafts individual reports. It began its work on 1 January 2010.

- **National preventive mechanism**

A national preventive mechanism in BiH has not yet been established in the OPCAT framework; possible models of national preventive mechanisms are being considered in terms of its establishment with the assistance of the OSCE.[71]

- **Institution of the Ombudsman for Human Rights in BiH**

This institution is currently the only independent institution dealing with human rights in prisons. Within the Office, there is a department for monitoring human rights of prisoners/detainees, managed by an assistant ombudsman. Work of the ombudsman is governed by the Law on Ombudsman for Human Rights of BiH.[72]

In September 2009, the Office of the Ombudsman published the *Special report on the situation pertaining to human rights in institutions for execution of criminal sanctions in BiH*.

- **Non-governmental organisations**

According to the information available, the Helsinki Committee for Human Rights in BiH and the Red Cross are organisations dealing with prison monitoring as well.

[69] Official Gazette of RS, No. 59/09.
[70] Official Gazette of BiH, No. 8/09.
[71] Organization for Security and Co-operation in Europe.
[72] Official Gazette of BiH, No. 32/00, 19/02, 35/04 and 32/06.

4.3. Characteristics of the current supervision over the work of prisons

Supervision over the work of prisons through inspectors has long-lasting tradition in BiH, but is accompanied by many difficulties and open issues reducing its effectiveness. In terms of organisation, it is related to the sector for criminal sanction enforcement, and inspectors are accountable to the assistant minister for criminal sanction enforcement.

Since neither the state nor the entity level has "Administration for Execution of Criminal sanctions" and since the sectors are understaffed, the current inspectors appear to be directly involved in the everyday work of prisons, including decisions relating to the treatment of individual prisoners and dealing with complaints, transfer of prisoners and other tasks unrelated to inspection or even incompatible with inspection.

Similarly, there are some other inconsistencies to be eliminated in order to improve the work of inspection, raise its effectiveness and independence, as well as to make its findings observed. First and foremost, it is necessary to set the criteria for becoming an inspector and then organise adequate training that should be organised for all the inspectors. Prison staff are not informed on the content of inspection, reports are not observed and are disparaged, there is little accountability or determination in terms of ordered measures, deadlines and recommendations on the part of institution managers. Similarly, the inspector is not protected after inspection, and there is a lack of adequate material and technical resources and the reports are not published.

V. PROPOSED CHANGES ENABLING GRADUAL IMPROVEMENT OF THE WORK OF INDEPENDENT INSPECTION

- **Recommendation 1**

In order to improve supervision over the work of prisons carried out by inspectors of the Ministry of Justice in accordance with European standards and the EPR, and taking into account the current legal framework, the following system of steps is proposed:

1. Step

Establish an inspectorate as a unit within the Ministry of Justice, responsible for its work to the Minister of Justice. This would lead to greater independence and would improve its work.

2. Step

In further development, the unit referred to in Step 1 could be transformed into a separate body managed by the Chief Inspector for prisons.

3. Step

Further development of supervision over the work of prisons carried out by inspectors of the Ministry of Justice will depend on a further reform of the prison system.

These steps should be accompanied by adequate legislative solutions, as described in the appendix. Similarly, it is possible to use proposed legislation drafted within the joint project between the CoE and Canadian CIDA, "Professionalization and harmonisation of prison systems in Bosnia and Herzegovina", within the proposed law on detention and prison.

- **Recommendation 2**

Regardless of the step in question, it is necessary to consider the preparation of a manual for inspection, containing guidelines for inspection and standards that are objectively based and represent the criteria for inspection and that encompass each aspect of prison life, from admission to release, which is within the competence of inspection. They would be developed on the basis of legislative solutions, international obligations and international good practice and standards.

A basis for drafting the manual can be found in the guidelines and working methodology for inspection and standards in the appendices to this paper, which should be adjusted to the conditions prevailing in BiH. This manual could be used by other bodies dealing with prison inspection in BiH.

- **Recommendation 3**

It would be necessary to develop the methodology with regard to actions of prison directors after inspection. Prison directors would be obliged to introduce the staff to inspection findings and to develop a plan for removing shortcomings and for implementation of inspection recommendation in practice.

- **Recommendation 4**

The report, or parts of it, should be available to the public, prison staff and prisoners pursuant to regulations governing the freedom of access to information, taking into account the protection of public interest and the overall prison security, as well as the protection of human rights of prisoners and prison staff.

- **Recommendation 5**

It is recommended that the complaint system be separated from inspection and that inspectors carry out prison inspection, while Manual 2 of the CoE[73] be used for dealing with complaints, which defines a system of dealing with complaints as separate from inspection.

[73] Training manual for prison staff for dealing with complaints of persons deprived of liberty No. 2, March 2007, Council of Europe.

- **Recommendation 6**

For effective inspection of prisons, it is necessary to introduce adequate continuous training for inspectors.

- **Recommendation 7**

The relevant legislation should prescribe clear criteria and conditions to be met for employing, within civil service, inspectors for inspecting prisons, which are necessary for performing tasks within inspectors' competence.

VI. SUMMARY

Prisons are, by nature, closed establishments, often far from the public, within which a group of people have considerable powers over another group of people. Well-managed as prisons may be, there is always a possibility of abuse of powers, which is why it is necessary to establish independent inspection, and it is also desirable for inspectors to have good knowledge of the prison system.

Inspection is much more independent if reports are submitted not only to the prison administration but to the ministry as well. On the other hand, there is the danger that the authorities will ignore inspection reports. It is therefore important for such reports to be available to the public, which would at the same time put prison systems under the watchful eye of the public and politics.

Similarly, it is also important for inspection to develop its standards and have a working manual that would help train staff in charge of inspection and would represent the inspection working methodology. It is a transparent document also representing a source of information for those who would like to understand how and why inspection is carried out, including prisoners and prison staff. Inspectors, in charge of inspection, often cooperate with other inspectors in the field of healthcare, hygiene, education, etc.

VII. APPENDICES

Appendix 1: Guidelines for developing a manual for inspection of prisons in BiH

Appendix 2: Expected results, standards and indicators for certain fields of inspection of prisons in BiH

Appendix 3: Proposed legislative changes necessary for implementing Step 1

Council of Europe
Conseil de l'Europe

European Union
Union européenne

Joint Project between
the European Union and the Council of Europe

"Efficient Prison Management in Bosnia and Herzegovina"

VI – ASSISTING IN THE DEVELOPMENT OF AN INDEPENDENT INSPECTION MECHANISM AS A FUNDAMENTAL SAFEGUARD AGAINST HUMAN RIGHTS VIOLATION IN PRISONS

Appendix 1

GUIDELINES FOR DEVELOPING A MANUAL FOR THE INSPECTION OF PRISONS IN BOSNIA AND HERZEGOVINA

Sarajevo, April 2010

CONTENTS

PAGE

1. INSPECTORATE STAFF GUIDELINES AND METHODS OF WORK

1.1. PURPOSE

To provide independent scrutiny of the conditions for and treatment of prisoners and other detainees

1.2 GENERAL PRINCIPLES OF CONDUCT

The following provides a brief guide of what is expected of staff while employed by the Inspectorate.

At all times

- Treat everyone with respect.
- Declare any conflict of interest. Just remember that undeclared relationships between the inspector and the inspected could be seen to compromise the impartiality of inspection.
- Maintain Inspectorate confidentiality e.g. do not share the dates of unannounced inspections with those who do not need to know, in particular prison staff.

During inspections

- Dress smartly. Remember, you are acting as an ambassador for the Chief Inspector.
- Always wear your ID badge.
- Politely refuse 'gifts' from establishments (e.g. payment for taxis etc).
- Do not socialise with any staff during the course of the inspection.

Security

- Do not take possession of establishment keys unless you have had key training.
- If a prisoner asks you to do something for them, direct them to a member of staff.
- Do not take any unnecessary items into an establishment with you, e.g. leave overnight bags in your own or a colleague's car or in the hotel if possible.
- Do not carry any unnecessary items around an establishment with you, such as house keys, mobile, money etc.
- Inform a member of staff if you think security is being compromised.
- Both in and outside establishments, do not share personal information about prisoners within hearing of others.
- If prisoners declare that they wish to hurt themselves or others, or reveal any additional information that jeopardises security, inform them that you will be sharing this information with a member of staff.
- If interviewing a difficult prisoner take the advice of staff. If staff believes the prisoner presents a specific risk to you at this particular time, you may wish to consider a different approach. If you go ahead with the interview, ensure you can be seen by staff and give staff an idea of when the interview is likely to end.
- If you are ever unhappy about the way a conversation is going or feel threatened by a prisoner extricate yourself from the conversation; your personal safety is paramount.

1.3 COMPLAINTS

The Inspectorate takes all complaints seriously, about their staff.

1.4. INSTRUCTIONS FOR CASES OF SERIOUS CHARGES (ALLEGATIONS) AGAINST THE STAFF

During all interviews with prisoners, inspectors are obliged to inform them that, if there is a danger of physical injuries inflicted by the staff, such information must be submitted to the prison director. Should a prisoner make allegations against the staff, the inspector should convince the prisoner to inform the competent authorities himself, since little can be done without the prisoner's statement.

If the prisoner wishes to remain anonymous, the inspector is obliged to respect it and to inform the prisoner that a due notification will be made to the director anonymously, since the director is responsible for taking further action. The inspector acts accordingly.
If the prisoner chooses to do it himself, then the prisoner should also have a conversation with the director; alternatively, the inspector can have the above conversation if it was previously agreed so.

2. THE INSPECTION PROCESS

Conducting an inspection partly depends on the type of inspection; whether it is announced or unannounced, follow up, etc.

The process of inspection includes the following:

2.1. INSPECTION PROGRAMMING

- Develop and agree inspection programme for the year (timetable)
- To allocate the tasks among inspectors
- Book accommodation for inspection, in case of staying few days

2.2. PREPARING FOR INSPECTION

Most prisons also have a liaison officer for inspection; sometimes, so-called pre-inspection visits are made, which last one day and which are used for discussions with the liaison officer, for surveying the institution, to interview the key staff, to make the necessary arrangement for inspection and to discuss all the relevant issues with the prison manager. Such pre-inspection visit is not a brief inspection; rather, its purpose is to gather information. There is usually a pre-inspection checklist including the following items:

- Establishment name and date
- General information about the establishment
- Reception to prison
- First night and induction
- Residential accommodation
- Segregation unit

- Relationships/Personal officers
- Safer custody – to cover anti-bullying and suicide and self-harm
- Race relations and foreign nationals
- Visits
- Description of location and facilities for prisoners and visitors inc. children's area and supervision
- Health services
- Substance use and rehabilitation programme
- Learning and skills and work
- Education
- Activities
- Library
- Gym
- Faith
- Resettlement
- Sentence planning
- Any additional areas such as, lifers, vulnerable prisoners, older prisoners, child protection, est.

- notify the prison director about the forthcoming inspection
- send in advance a list of requests to the prison, informing the prison what is to be done prior to the inspection
- if the inspection is conducted by several members, it is necessary to agree who is to write the final report

2.3. THE INSPECTION

The first day of the inspection

- The inspection will begin with a formal briefing from the Governor about the establishment. This is a chance for the Governor to talk about progress since the last inspection and any new initiatives, as well as current issues and areas of concern
- The purpose of the prisoner groups is to get prisoner views on all aspects of life in the prison. As part of your introduction to the group you should do the following: Explain the inspector's role, Describe the methods used in the inspection process, Explain what will take place during the inspection week, Say when they can expect to be able to read a copy of the report, Explain that what they say will be anonymous no individual in the room will be identified as having given certain information, Explain you will be making a note of the comments made.
- meeting with different staff members
- Documentary evidence the prison will have made available a range of information, requested by us, to assist the inspection process.

Other days

- Start the inspection and use the inspection manual
- Make detailed notes about the findings
- If there are several inspection members, meet at the end of each day and exchange findings

- Define issues about which you will immediately notify the prison manager and other management staff
- Make a visit to the prison at night so as to check the treatment of prisoners during night time and to check the ability of the staff to react in cases of emergency; engage a night shift to help with this

Final day

- Reporting to the manager and management of the prison on key findings
  The above reporting should not last longer than 45 minutes, up to one hour. The purpose of this meeting is to inform the management about the key findings; the purpose is not to have an extensive discussion about the matter.

There are five key sources of evidence for inspection:

1. Observation
Visit different locations at different times of the day (including evening association times). This is also a good time to assess the quality of staff–prisoner relationships.

2. Prisoners
In addition to the survey and the groups, you are expected to speak to prisoners on the accommodation units about what they think really happens in the areas you are inspecting. For example, ask them if they have personal officers, if they have a sentence plan, how many hours they spend out of their cell etc.

3. Staff
Speak to staff as you walk around the establishment and in individual interviews. Ask them what they think really happens. For example, ask them about certain policies, if they know what their role is, whether they have enough time/support to complete tasks etc.

4. Relevant third parties
Take the opportunity to speak to both statutory and non-statutory providers e.g. NGO, voluntary groups and solicitors about their experiences and the experiences of those prisoners they represent. Visitors can also be a good source of information.

5. Documentation
In addition to the documentary evidence provided on the first day, look at prisoner records such as observation books, prisoner personal files, care plans, sentence plans etc. to corroborate your findings.

All inspection findings/judgements should wherever possible be based on the triangulation of multiple evidence sources. An attempt must always be made to seek supporting evidence from alternative but relevant sources.

3. THE INSPECTION REPORT

It is important that all reports produced by the Inspectorate are consistent in style and format. The following guidelines should ensure that every inspector is working to the

same template and that the process of preparing each report for publication is as short as possible.

THE FORMAT OF FULL INSPECTION REPORTS

General format

Each report should be submitted in a simple Word file(s).

Tense

All contributions should be written in the past tense.

Expectations

Each section of the report should reflect whether the establishment is meeting the specific outcomes for prisoners as outlined in Expectations.

The healthy prison summary

which outlines the main findings that are set out in the main body of the report and usually are wrote in paragraphs

Main recommendations

Main recommendations appear at the end of the healthy prison Summary

Examples of good practice

Examples of good practice are listed at the end of the relevant section following any recommendations.

Recommendations should be ascribed to the relevant recipient where possible

APPENDICES

All inspectors must keep their annotated inspection notes and any material collected during an inspection for a period of 12 months after the publication of the inspection report. All original notes must be securely destroyed at this point unless there is a justifiable business need to keep them e.g. judicial review, investigation.

DRAFTING A REPORT

- Send the first draft of the report to the members having conducted the inspection
- Make necessary changes
- Send the second draft again
- Make the final draft and send it to the prison

4. FOLLOWING INSPECTION

After the inspection is over and the report received, the institution develops an action plan for implementing the relevant recommendation in practice within a certain deadline.

5. FOLLOW-UP INSPECTIONS

Look specifically at whether the recommendations of a previous full inspection have been achieved. Inspectors should indicate whether each original recommendation has been:

- Achieved
- Not achieved
- Partially achieved
- No longer relevant (because the context of the original recommendation has changed), or
- Not inspected

In the majority of cases, a short paragraph should be included explaining or expanding on the conclusion.

6. INSPECTION CHECKLIST

These checklists are based on Expectations and inspectors should use them for guidance when inspecting specific areas. They outline the additional documentary evidence to be requested and the lines of enquiry to be pursued

1. Contacts with outside world – telephone, post, visits

Prisoner groups- ask about the following:

- Raise issues highlighted in the survey, and specifically ask about telephones and visits. How do they think visitors are treated and do visits start on time?
- ask how prisoners are helped to maintain family ties, and what help, if any is provided by personal officers
- Any children/family days?

Prison documents

- collect any documents with information about contact with families and friends, use of phones etc. (such as the induction booklet, information provided in the visit centre etc) and check for correct and consistent information – visit times/visit booking number – the detail of times/days sometimes don't tally
- Does any of the literature contain details of local and national organizations useful to family and friends?
- Does the personal officer policy say anything about helping prisoners to maintain family ties?
- Check the resettlement policy – how does the prison plan to deliver against pathway six and what is the quality of plans? Can family members attend sentence planning reviews and/or any accredited programme reviews?
- Are there any accredited parenting/relationship courses available to prisoners? How do they know about them? Collect numbers attending and details about how they are allocated.

Reception

- Are prisoners asked about responsibility for their dependants in reception, particularly in locals? Is this recorded? They may be caring for children or

dependant adults. Ask staff what they would do if a prisoner said a child, or an elderly parent, was left alone at home

- Are the ages of children recorded and are prisoners asked in whose care they are? Is there any other discussion about family, for example who's likely to visit or any family problems raised during the completion of the admission process?
- Do all prisoners get a free telephone call in reception or on the wing and is it recorded?
- make a note of the names of some arrivals and ask them later in the week if/when they got a phone call
- do reception staff appreciate the need for prisoners to contact family and how do officers respond when a prisoner raises an issue

Induction

- Check that induction literature contains simple and correct information about contact with family and friends. What about those who can't read or who have sight/hearing disabilities?
- Is information presented verbally by staff and is it good quality? Are prisoners asked if they've been able to make a telephone call? Ask prisoners and staff about the quality of information provided. Do they think it could be improved?
- Is any specific information designed for visitors made available e.g. map, information about public transport, what happens upon arrival, what ID is needed, other useful information? How do visitors get it? Is the onus on prisoners to send it, or does the prison pay to send it out?
- Do they know that the scheme may pay for overnight accommodation? Does the prisoner information booklet include detail about the scheme?

Post

- Are all prisoners given a letter and envelope and does it include a pen? (it frequently doesn't). When do they get this?
- Can prisoners have unlimited stamps in their possession? If not, why not? If this is prevented for 'security' reasons what are these? (Is there evidence of prisoners using stamps as 'currency'?)
- ask prisoners and staff how the postal system works
- are there any delays to post and why – speak to vulnerable prisoners
- How do staff identify those who may need special attention and who do they tell?
- Can prisoners have free children's letters (this is more usual in women's establishments)?

Telephones

- Do all prisoners understand phones are monitored and when they can be used?
- Are there any delays to PIN activation? Frequently there are delays especially to those arriving on Friday afternoon/evening when the clerk has gone and won't be in over the weekend. Does anyone ensure that such prisoners can make a call using an office phone?
- Can phones be used in private and do prisoners queue? If calls have to be booked who has responsibility for this and is it operated fairly? Ask prisoners and staff and go and see for yourself

- Is there any provision for in-coming calls?
- Is association predictable to allow prisoners to know when they will be able to use the phone so they can tell family when to expect to hear from them? Is there frequent evening association so that prisoners can speak to school age children not available during the day?
- Can prisoners use office phones to make emergency calls? How easy is this and who decides what an emergency is? If an application is necessary does this effectively prevent calls being made?
- Have staffs listening to calls had awareness training to recognise any threats or coercion? To whom do they report any concerns and what happens to this info? Is it passed on to social services/police?
- Foreign nationals – consideration of time differences for calling abroad? Free calls/air mail letters? Do foreign national prisoners know what their entitlements are?

Personal officers (POs)

- Ask staff what they do to assist prisoners in maintaining family ties
- Do they have contact with families – do they want to/is it expected of them? What would they do if a prisoner asked for help and what resources are available? What specific training have they had or what training do they need?
- Look at wing observation books and wing files for evidence of PO's knowledge of prisoners' family life and any help given
- Ask POs about special visits – where will they happen and who organises them? Also ask prisoners involved in care/custody procedures this question and how easy is it for them to contact their social worker/solicitor? Are they able to attend family court hearings? Is counselling support available to help prisoners suffering from loss and grief?
- If prisoners tell you that they choose not to have children visit them because it would be too upsetting for them/children, wrong environment etc, this suggests that POs are not addressing this situation and not helping prisoners to look at the child's needs
- Ask chaplains if they are often asked to make calls on prisoners' behalf, and if they often speak to family members – this also suggests that POs are not providing the necessary support.

Visits and telephone calls

- How do prisoners find out about visits and inter-prison visits and phone calls? Is it included in induction information? Any published policy?
- How do prisoners prove relationships? Often required to provide household bills in joint names although in practice often claim separately?

Visitors' centre

- Is there one? If not, why not? Where do visitors wait? If they don't come by car, how do they stay dry if it's raining?
- Is there disabled parking and is it available? (or used by staff)
- What's the environment like in the centre e.g. comfortable, good facilities, clean toilets (with soap/paper towels – have a look at them), refreshments, display of local and national information?
- Any resettlement information?

- Is there good engagement between centre staff and visitors?
- Can visits be booked while at the prison?
- Speak to visitors about their treatment, access to the booking line and good and bad things about the establishment/visitors' centre/booking system
- How would visitors share concerns about a prisoner?
- Speak to centre staff and ask what visitors complain about. How are visitors able to give feedback?
- Is there regular input from prison managers? Do staff feel supported and able to express the needs of visitors? What involvement is there from community agencies?

Visits search area

- Be a visitor. Follow visitors through the procedure. Time it.
- Look at the environment of the search area – is furniture clean and is there enough seating? Is the room warm and are toilets clean? Go and look – are there soap/drying facilities?
- Is there a baby change (often only in women's toilet)? Ask staff what happens if a male carer needs to change a nappy? Do staff greet and engage well with visitors?
- What sort of information is displayed – newspaper cuttings about arrests for drug smuggling? If so, ask staff what the point of this is and what's provided to help visitors who may be pressured to bring drugs in?
- Is there a safe facility to search a baby or to lie it down safely while the carer is searched or do officers have to hold the baby?
- Strip searching – if it's taking place find out about the numbers involved, the reasons for searching and ask what is found
- Drug dog – upon indication is there any alternative to a closed visit or leaving? If not, why not?

Visits hall

- Ease of access to and environment of visit hall e.g. cleanliness, comfort, child-friendly furniture, refreshments, information displayed. Is it noisy? Are the tables situated to allow some privacy?
- If there are vending machines are they sited to avoid any danger of spillages on other visitors/children in the immediate area?
- Are visits delayed and if so, why? Do those on basic get only 30 minutes – this punishes visitors
- How do vulnerable prisoners get to/from the hall?
- How do prisoners know they've got a visit and where do they wait?
- Go and look at the holding room and see what goes on there/safety/supervision
- Is there a supervised play area? What's the environment like with regard to size, safety, and quality of toys, staffing? Is the area always staffed and available? Are staff trained for this role i.e. at a minimum have they received child protection training?
- Are there any evening visits and when can be used?
- Can prisoners receive visits from their own children/grandchildren only?
- Do vulnerable prisoners have equal access to visits? How do they get there/back? Where are they held while waiting?

Closed visits

- Often of 30 minutes duration and may not be available at weekends/evenings
- Any special provision for children on indication of dog or are children also faced with closed visits and therefore unprepared for no physical contact with mum or dad?
- Environment of closed visits i.e. cleanliness, privacy, anything to occupy children? Can visitors/prisoners in closed visits have refreshments?
- Check audibility of closed visits booths with help of a colleague or visits officer
- Do both prisoners and visitors have access to a toilet during closed visits? If not, why not?

Also…

- Remember that information given to prisoners may well need to be presented in languages other than English and also in media other than the printed word
- Keep a note of names and dates of staff and prisoners spoken to in case of challenge

2. Health services (only part of the questions related to the health service has been stated**)**

First day of inspection

- Review all the documentation
- Speak with the head of health services to identify joint planning arrangements and to discover what kind of relationship the establishment has with the local health centers.
- Health services organizational chart; who is in charge and are they represented on the senior management team?
- All in-house staff (including GPs, pharmacist, if applicable, and administrative) and their qualifications, nurse training plans, details of clinical supervision, continuing professional development, clinical governance, vacancies and minutes from last 3 staff meetings
- Numbers and types of all visiting staff (including mental health), psychiatrists, voluntary sector, genitourinary medicine etc.
- Latest health improvement/prison health development plan and action plan
- Minutes of previous two prison health steering group meetings
- In-patient regime (if appropriate)
- Primary care timetable, including nurse-led clinics
- Full set of health services policies, including in-possession medications and so on

During the inspection

- Health may be an issue that concerns many prisoners and as such these groups can provide a good starting point for the rest of the week
- It is important to meet the health services manager as soon as possible. Inform them of the nature and scope of the inspection and ask them about any issues raised by the documentation. Obtain their views on the issues and what they believe to be the strengths and weaknesses of the service.
- During the week meet other key staff groups, including GPs, nursing staff, dentist, pharmacist and any visiting clinical staff. Obtain evidence of inter-

departmental working by talking with chaplaincy, gym, catering and other personnel. It is also useful to speak to the core inspectors covering these areas.
- During the week speak to prisoners as needed. The health services department waiting room is often a good place to meet prisoners waiting for treatment and provides a useful starting point for discussion
- Delivery of care is inspected using standards

The physical environment for clinical care

- Judgments should be made about the environment in which health services is provided. This will include information about the type of healthcare centre, its size, whether or not it has facilities for inpatients and, if so, the number of beds available. The layout of each room, its function and general cleanliness should also be inspected.
- The following areas also need to be examined: clinical rooms, treatment rooms (including wing-based), doctor's surgery, office space, emergency equipment – how often is it checked and by whom? Are records kept?
- Pharmacy, dental suite – cleanliness and equipment – is it fit for purpose?

Review records

- Prisoners' clinical records should be stored in a locked cabinet and access should be restricted to appropriate clinical staff.
- When a prisoner is released, where are their old clinical records stored and should the prisoner return to custody, are these easily accessible? It is good practice to amalgamate old clinical records with new ones if the prisoner has had previous custodial sentences. It is important to identify if the establishment has a policy on this.
- The health services department should have many policies regarding the level of clinical care and supervision provided to prisoners. Due to the temporary nature of much of the client group it is important that each establishment has a sensible policy on the sharing of information with other health services providers and non-clinical prison staff.

Primary care

- All prisoners are required to see a health professional on their arrival in custody. Observe the interaction between health services staff and new prisoners and inspect the quality of the initial screening. Does this initial screening include mental health/risk assessments and are there any links with detox provision? Observe and question the degree to which staff know and apply the local policy that you have read
- Once prisoners are received into the prison, how do prisoners access health services? Most prisons operate an application system, which should be confidential and efficient. Find out what the waiting lists for appointments are like and decide whether the timing and frequency of clinics, including GP and dental clinics, are appropriate to meet the needs of the population. How are prisoners prioritised for appointments? Is a triage system used and, if so, are triage algorithms used? Are prisoners allowed to attend the healthcare centre on fee-flow movement or do they have to be escorted?
- Is there an initial screening and a secondary screening at a later date. The two screens should not be conducted at the same interview

- To make referrals to secondary care services, establishments have links with local hospitals. Identify how these referrals are made and what the waiting lists for such services are like
- It is important to identify whether nursing staff are used in the best and correct manner. For example, are nurses doing lots of non nurse duties such as non-clinical administration or escorts?
- The way in which care is delivered is central to practice in a good service. Observe how health staff interacts with and treat prisoners in their care. Are they professional, observing confidentiality and the prisoner's privacy issues?
- When looking at the pharmacy, identify how it is run, what the treatment times are and whether there are any pharmacist-led clinics. A medicines and therapeutics committee should be in place and meet regularly. Check the establishment's policy on in possession medicines. What routines are in place for prisoners wishing to report special sick? Are any over-the-counter remedies available and is the out of hours access service/access suitable? It is useful to observe medicine being administered. Liaise with the pharmacy inspector
- Visit the segregation unit to identify how prisoners located there receive their medication and get access to clinical staff. Talk to prisoners, staff and health services professionals about the level of care given to these prisoners
- Speak to as many visiting staff as possible to gain their opinion of the quality of care delivered. What is the access to service and provision like and does it meet the needs of the population?

Mental health

- Mental health provision is a key issue in many establishments. It is important to identify whether the service offered to prisoners is comprehensive and appropriate.
- Speak to the lead for mental health in-reach. Establish who they provide services for (all prisoners or those with severe and enduring mental illness only). How are referrals to the service made?
- How are prisoners with mental health needs managed in the establishment? Is a primary mental health service provided?
- What day care provision, if any, is available and who is it for? How is this accessed and do patients find it helpful?
- How psychiatric assessments are arranged and are there any associated difficulties?
- Are there any prisoners waiting transfer to NHS beds and are there any issues surrounding the transfer of these patients? How long are prisoners waiting for beds?
- Check for evidence of multi-disciplinary meetings, care planning, through care and links with local services
- Are there any specific services for disclosure of abuse and how are these services accessed by prisoners?

Substance use

While emphasis might vary depending on type of establishment and population, the following areas will be covered during a substance use inspection:

Substance use strategy

- evidence of leadership and senior management involvement
- comprehensive policy document with up-to-date action plans and monitoring arrangements
- inclusion of alcohol services
- evidence of regular meetings and multi-disciplinary membership, including service providers
- joint working protocols and integration of external providers
- evidence of links with the local centres staff
- regular training programme for staff involved in the care of substance users

Rehabilitation programmes

- management and staffing structure of provider
- staff training/support and supervision arrangements
- type of programme and its suitability for the population
- location and facilities
- referral procedures, selection/exclusion criteria
- details of programme content
- throughput and completions
- outcomes for prisoners
- care planning and joint working
- through care arrangements
- onward referrals
- evidence of meeting the needs of different groups

Voluntary drug testing

- evidence of a programme open to all prisoners
- quality of drug free unit (location, regime, support services)
- clearly established exclusion criteria
- clear compacts that are differentiated from compliance testing compacts
- positive test results are not followed by disciplinary procedures
- testing arrangements (facilities, staffing, procedures)
- testing frequency is monitored and test results recorded
- staff selection and training
- referral procedures of involvement organizations from the community
- annual needs analysis is undertaken to ensure change in demand for VDT can be met

Supply reduction and security measures

- agreed searching strategy is available
- effective security measures to restrict drug supply (e.g. use and access to passive/active drug dogs, use of closed visits, perimeter security etc)
- effective collation, evaluation and dissemination of intelligence on drug-related matters
- regular and proactive review of intelligence systems and drug trends
- effective liaison with local police
- representation of security staff on drug strategy committee and vice versa

- proactive liaison and effective communication channels between security staff, anti-bullying coordinator and drug teams

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"Efficient Prison Management in Bosnia and Herzegovina"

VI – ASSISTING IN THE DEVELOPMENT OF AN INDEPENDENT INSPECTION MECHANISM AS A FUNDAMENTAL SAFEGUARD AGAINST HUMAN RIGHTS VIOLATION IN PRISONS

Appendix 2

EXPECTED RESULTS, STANDARDS AND INDICATORS FOR CERTAIN FIELDS OF INSPECTION OF PRISONS IN BOSNIA AND HERZEGOVINA

Sarajevo, April 2010

CONTENTS

I. ADMISSION AND CONDITIONS OF SERVING PRISON SENTENCE

Expected results

Persons deprived of liberty, serving prison sentence or pre trial detention measure in prisons, are kept in conditions ensuring the exercise of guaranteed rights and not subjectively affecting the person deprived of liberty in a humiliating way and not offending their human dignity, ensuring them normal living conditions as well as preservation of their physical and mental health.

Standard

Prisoners are admitted to prison to serve a prison sentence and pre trial detention only upon a legal and binding court decision and a proper order of the competent court. The prescribed register is kept thereof.

Indicators

1. No person shall be admitted to or held in a prison as a prisoner without a valid commitment order, in accordance with national law. (EPR 14, BiH Enforcement Law art. 127, RS Enforcement Law art. 72, FBiH Enforcement Law art 32 para. 1 and 2)
2. At admission the prescribed details shall be recorded immediately concerning each prisoner. (EPR 15.1, BiH EL art. 56, RS EL art. 73, FBiH EL art. 34)

Standard

Accommodation of prisoners offers enough space, meets hygienic requirements, and ensures enough fresh air, daylight and temperature in accordance with the climatic conditions.

Indicators

1. Specific minimum requirements in respect of accommodation shall be set in national law. (EPR18.3, BiH EL 64, RS EL art. 75, FBiH EL art. 38 through 42)
2. Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation, when there will be night surveillance in accordance with the institution category. (EPR 18.1, BiH EL 65, RS EL art. 7 and 78)
3. Each prisoner shall have enough space in their cell to move around and sit at table, regardless of whether the cell is for one or more prisoners. (EPR 18.1, BiH EL art. 65, 66, RS EL art. 75/5, FBiH EL art. 40/1)
4. Prisoners are placed in cells according to the prescribed criteria: sex, chronologic age and status in criminal proceedings (EPR 18.8, BiH EL art. 54, RS EL art. 75/1, 76/2, FBiH EL art.15)
5. During low-temperature periods, cells are heated regularly. (EPR 18.1, BiH EL art. 66, RS EL art. 75 para. 4, FBiH EL art. 40 para.1)
6. Cells are kept clean and whitewashed. (EPR 18.1, 19.1,19.2, BiH EL art. 66, RS EL art. 76 para. 3, FBiH EL art. 38 through 42 and 100)

7. Each prisoner shall have a chair and a place at table. (EPR 18.1, BiH EL art. 65, FBiH EL art.100)
8. Each prisoner shall have a space to keep their belongings. (EPR 19.5, FBiH EL art.100)
9. Cell windows shall allow the entrance of enough fresh air and natural light. (EPR 18.2, BiH EL art. 66, RS EL art. 75 para.5, FBiH EL art. 40/1 and 2)
10. Prisoners shall be able to be in the open (EPR 21.1, BiH EL art. 84, RS EL art. 111, FBiH EL art. 100).

Standard

Each prisoner has clean bedding that is kept clean.

Indicators

1 Cells are kept tidy and prisoners have access to cleaning implements and materials. (EPR19.6, BiH EL art. 66, RS EL art. 76 para.3, FBiH EL art. 38 through 42 and 100)
2 Each prisoner has a bed with bedding. (EPR 18.1, BiH EL art. 64, 65, 66, RS EL art. 75 para.3, FBiH EL art. 39/2 and 100)
3 Upon admission, prisoners are issued clean bedding. (EPR 19.2, BiH EL art. 64, 65, 66, FBiH EL art. 38,39 and 100)
4 Mattresses are neither dirty nor torn. (EPR 19.2, BiH EL art. 64, 65, 66, RS EL art. 75 para.3, FBiH EL art. 100)
5 Bedding is kept clean. (EPR 19.1, BiH EL art. 64, 66, FBiH EL art. 100).

Standard

Prisoners have unlimited access to fresh water and toilets, enabling them to meet the fundamental health and hygienic needs.

Indicators

1 Fresh water and water for personal hygiene is available without limitation. (EPR 19.3, BiH EL art. 67, RS EL art. 75 para.1, FBiH EL art.16, 38, 100)
2 Prisoners shall have unlimited access to sanitary facilities that are hygienic and respect privacy (EPR 19.3, BiH EL art. 66, RS EL art. 75 para.4, 76 para.2, 77 para.1, FBiH EL art. 40 para.1,4 and 5)
3 Toilets in cells ensure privacy. (EPR 19.3, BiH EL art. 66, FBiH EL art.40 para.4). Prisoners can wash their hands after using the toilet. (EPR 19.3, BiH EL art. 66, RS EL art. 75 para.4, FBiH EL art. 43 para.1)
4 Adequate facilities shall be provided so that every prisoner may have a bath or shower in the interest of personal hygiene (EPR 19.4, BiH EL art. 66, RS EL art. 75 para.4, FBiH EL art. 40 para.5 and 41 para.1)
5 Prisoners take showers in privacy. (EPR 19.4, BiH EL art. 66, FBiH EL art. 40 para.5)

Standard

Immediately upon admission into a prison, prisoners and detainees are introduced to their rights, duties and norms governing the conditions and serving a prison sentence or detention measure.

Indicators

1. Immediately upon admission, each prisoner is introduced to their rights, duties and manner of serving a prison sentence or detention measure (EPR 15.2, BiH EL art. 57, RS EL art.73 para.5, 6 and 7, FBiH EL art. 36 para.1)
2. Immediately upon admission, each prisoner is examined by a health professional and issued a medical record. (EPR 16, BiH EL art. 63, RS EL art.72 para. 2, FBiH EL art. 34 para.1)

List of questions

General information

1. Department title
2. Capacities and occupancy rate
3. Legal grounds for prisoners' accommodation (classification)
4. Number of floors, rooms
5. Conditions for personal and collective hygiene
6. Conditions of cell and collective accommodation

Methodology

1. Checking all the premises for accommodation of prisoners
2. Pay particular attention to sanitary and hygienic conditions
3. Interview prison staff
4. Interview the director of the prison
5. Interview prisoners
6. Inspect prescribed, additional and internal records and documents

Relevant indicators

1. Accommodation of all prisoners shall respect their human dignity.
2. The space prisoners are accommodated in enable them to sleep, move around, sit and work normally,
3. Each prisoner shall have a desk, a chair and a safe place to deposit their belongings without fear that they may be stolen, damaged or destroyed.
4. Cell windows shall allow the entrance of enough fresh air and natural light.
5. Artificial light shall enable prisoners to strenuously read and write.
6. The space for accommodation is equipped with implements and materials for maintaining personal and collective hygiene.
7. Fresh water is always available.
8. Toilets may be used without restriction and shall provide privacy as well as toiletries.

9. Hot water for bathing and showering is available on a daily basis.
10. Bedding shall be replaced at least once a week; the use of laundering facilities is available at least once a week.
11. Female prisoners shall be able to maintain their personal hygiene in accordance with special sanitary needs.
12. In their cells, prisoners shall have an alarm at all times, which they can use to call the staff on duty.

II. CLOTHING AND NUTRITION

Expected results

While serving a prison sentence or pre trial detention measure, prisoners shall be provided with clothing that is not degrading and is in accordance with the climatic conditions, as well as nutrition meeting the prescribed health and sanitary conditions and appropriate to their cultural and religious needs.

Standard

Prisoners' clothing is appropriate to the climatic conditions, is not degrading and is kept tidy (clean).

Indicators

1. Prisoners shall be provided with clothing that is suitable for the climate and is not degrading (EPR 20.1, BiH EL art. 80, RS EL art. 81, FBiH EL art. 43/1 and 2, 100)
2. Prisoners shall be able to regularly maintain their clothing clean. (EPR 20.3, BiH EL art. 80, RS EL art. 81, FBiH EL 43/1 and 2, and 100.)
3. When going outside the correctional facilities, prisoners shall be able to wear their own clothes. (EPR 22.4, BiH EL art. 80, RS EL art. 81, FBiH EL art.)

Standard

Bedding shall be changed and washed on a regular basis.

Indicators

1. Each prisoner shall have a separate bed and bedding (EPR 21, BiH EL art. 65, RS EL art. 75, FBiH EL art. 39 para. and art.100)
2. Bedding shall be kept in good order and changed often enough to ensure its cleanliness. (EPR 21, BiH EL art. 65, RS EL art. 75/3, FBiH EL art. 39/2 and 100)
3. Prisoners without their personal means shall be provided toiletries by the institution. (EPR 19.6, BiH EL art. 66, RS EL art. 94 para. 1, FBiH EL art. 41 para. 1)

Standard

Prisoners' nutrition is suitable for their health condition, diverse and adjusted to their religious and cultural needs.

Indicators

1. Each prisoner shall be provided food in regular meals at least three times a day. (EPR 22.4, BiH EL art. 69, RS EL art. 80, FBiH EL art. 44 para. 1)
2. Food shall be prepared and distributed hygienically. (EPR 22.3, BiH EL art. 69, RS EL art. 80, FBiH EL art. 44 para. 1)
3. Food shall satisfy the prescribed caloric content. (EPR 22.2, BiH EL art. 69, RS EL art. 80, FBiH EL art. 44 para. 2)
4. The weekly menu shall take into consideration the health, religious and cultural needs of prisoners. (EPR 22.1, 22.6, BiH EL art. 69, RS EL art. 81 para. 5, FBiH EL art. 44 para. 1 and art. 100)
5. Clean drinking water shall be available to prisoners at all times. (EPR 22.5, BiH EL art. 67, RS EL art. 75 para. 3, FBiH EL art. 16 and para. 100)
6. Kitchens shall be maintained in good order and the staff preparing food shall be dressed adequately. (EPR 22.3, BiH EL art. 69, RS EL art. 80 para. 5, FBiH EL art. 44 para. 1)
7. Food shall be stored in accordance with hygienic standards. (EPR 22.3, BiH EL art. 69, RS EL art. 80/5, FBiH EL art. 44/1)
8. Food temperature while being served shall be appropriate. (EPR 22.2, 22.3, BiH EL art. 69, RS EL art. 80/5, FBiH EL art.)
9. Dishes for serving food and cutlery shall be clean. (EPR 22.3, BiH EL art. 69, RS EL art. 80/5, FBiH EL art. 44/1)
10. The institution doctor or a medical practitioner shall inspect the kitchen regularly (once a week). (EPR 22.6, BiH EL art. 69, RS EL art. , FBiH EL art.)
11. Persons with health problems shall be provided with food in accordance with their health needs. (EPR 22.6, BiH EL art. 69, RS EL art. 80/3, FBiH EL art. 44/1)

Method of work

1. Inspecting documentation,
2. Direct observation,
3. Interview prisoners and detainees,
4. Interview prison staff,
5. Interview the director of the prison.

List of questions

1. Organisation of prisoners' nutrition
2. Conditions of food preparation and distribution
3. Conditions of food storage
4. Provision of clothing to prisoners
5. Maintenance and washing prisoners' clothes

Relevant indicators

1. For the purpose of prisoners' nutrition, the institute has a kitchen separate from that for its staff.
2. The kitchen has a sufficient number of qualified staff that can ensure the prescribed quality pertaining to food preparation.
3. All persons involved in food preparation and distribution have adequate clothing and regularly undergo sanitary inspection.
4. The kitchen has the required appliances and technical equipment enabling high-quality food preparation for all the categories of prisoners.
5. Daily meals are prepared following a menu composed and changed every week.
6. Prisoners are ensured daily nutrition in three meals, while juveniles and hard labourers an additional, fourth meal.
7. The menu is clearly displayed so as to be available to all prisoners.
8. The menu offers the caloric content of each meal.
9. Prisoners' daily nutrition meets the prescribed caloric content and nutrition diversity.
10. There is a weekly menu for special categories of prisoners, adjusted to the health and cultural needs of these categories.
11. The kitchen and all the kitchen appliances are kept clean.
12. A medical practitioner, at least once a week, inspects the kitchen, food and food storage premises, and submits a written notification of their findings and proposed measures to the prison manager.
13. Food samples of every meal are stored in an adequate place in accordance with hygienic and health standards.
14. Prior to food distribution, the authorised prison officer tastes the food and enters their observations into separate records.
15. Clean dishes and cutlery are ensured for food distribution.
16. Prisoners are enabled to wash their hands before and after each meal and have access to clean drinking water without restrictions.
17. Groceries for the kitchen are stored in adequate premises meeting hygienic and health standards.
18. Groceries for the prisoners' kitchen are stored in premises separate from the food storage used for staff nutrition.
19. Groceries identified by a medical practitioner as decayed and expired are not used for prisoners' nutrition.
20. All prisoners not wearing their own clothes for any reason whatsoever are provided, by the institution, with clothes that are not degrading or humiliating and that is suitable for the relevant climatic conditions.
21. Prisoners' clothes are not torn and are kept clean.
22. The institution has the required facilities for washing prisoners' clothes on a regular basis.
23. Prisoners' personal clothes are kept in an adequate place meeting hygienic and health standards.
24. Prisoners have access to their personal clothes while using external amenities, while going to court or while leaving the institution complex for some other valid reason.

III. CONTACTS WITH THE OUTSIDE WORLD

Expected results

While serving their prison sentence or detention measure, prisoners and detainees are ensured a contact with their family members, outside social environment, and bodies and persons involved in the protection of their rights, with only those restrictions necessary for the legal enforcement of the imposed sanction or detention measure.

Standard

Prisoners are enabled to communicate with their family without restrictions and as often as possible, to lodge petitions, complaints and appeals, without restrictions, to competent bodies and authorities dealing with the protection of their legal rights, as well as to have confidential conversations with inspectors, ombudspersons, lawyers and other authorised persons.

Indicators

1. Prisoners are able to write letters without any censorship. (EPR 24.1, BiH EL art. 80, RS EL art. 83, FBiH EL art. 53 para. 3, art.85 and 86)
2. Prisoners are able to have confidential conversations with inspectors, ombudspersons, lawyers and other authorised persons. (EPR 24.3, BiH EL art. 80, RS EL art. 83 para. 1, 4 and 6, FBiH EL art. 53 para. 1, 92 para. 1, art. 100)
3. Prisoners are able to lodge petitions, complaints and appeals, without restrictions, to competent bodies and authorities. (EPR 24.1, BiH EL art. 80, RS EL art. 83, FBiH EL art. 53 para. 3, art. 54 and art. 92 para. 1)
4. Prisoners are enabled to have unrestricted communication with their lawyers. (BiH EL art. 80, RS EL art. 83 para. 6, FBiH EL art. 53 para. 1 and 4, art. 87)
5. When prison staff is opening letters, they do so while the concerned prisoners are present.

Standard

Prisoners have the right to be visited by their family members in prescribed intervals and such visits cannot be prohibited by disciplinary procedures.

Indicators

1. Prisoners are able to have visitations in accordance with applicable legislation. (EPR 24.1, BiH EL art. 150, RS EL art. 85, FBiH EL art. 54, 87 and 100)
2. Prisoners are able to have timely information about severe illness or death of a family member. (EPR 24.6, BiH EL art. 83, RS EL art. 103, FBiH EL art. 56/2)

Standard

Prisoners are able to have telephone conversations with their family members, lawyers and other persons not interfering with criminal proceedings or negatively affecting the re-socialisation process.

Indicators

1. Prisoners are able to have telephone conversations with their family members (EPR 24.1, BiH EL art. 149, RS EL art. 83/2, FBiH EL art. 54 and 100)
2. The institution has a sufficient number of telephone booths ensuring confidential conversations. (EPR 24.2, BiH EL art. 149, RS EL art. 83, FBiH EL art.100)

Standard

Prisoners can use the available media to be informed about events worldwide and to communicate with the media in order to protect their legal rights.

Indicators

1. Prisoners are able to get informed about events in the country and worldwide in an appropriate manner. (EPR 24.10, BiH EL art. 82, RS EL art. 112, FBiH EL art. 55)
2. Prisoners are able to communicate with the media in accordance with applicable procedures. (EPR 24.12, BiH EL art. 57, FBiH EL art. 53 para. 1)

Standard

Prisoners have the right to participate in local and general elections, which is subject only to restrictions defined by law.

Indicators

1. Prisoners are allowed to participate in local and general elections in accordance with law. (EPR 24.11, BiH EL art. 58, RS EL art. 88, FBiH EL art. 16).

Standard

Prisoners are able to use amenities in and out of the institution in accordance with the prescribed criteria acknowledging security risk assessment and treatment success.

Indicators

1. Prisoners are allowed to use amenities in and out of the institution in accordance with prescribed procedures and limitations. (EPR 24.5, BiH EL art. 152, 153 and 154, RS EL art. 113, 114, 115, FBiH EL art. 85 through 88 and 91, 89 and 89a)

2. Prisoners using amenities outside the institution shall be subject to prescribed measures of supervision, restrictions and limitations (EPR 24.5, BiH EL art. 155 through 158, RS EL art. 116, 117, 118, 119 and 120, FBiH EL art. 89a)

Method of work

1. Inspecting documentation,
2. Direct observation,
3. Interview prisoners and detainees,
4. Interview prison staff,
5. Interview the director of the prison,
6. Interview persons visiting prisoners.

List of questions:

1. Capacities and occupancy rate
2. Organisation and procedures for visitations on the part of lawyers and other persons
3. Conditions in visitation premises
4. Conditions of making telephone calls
5. Manner of approving and using prisoners' amenities

Relevant indicators:

1. A separate document issued by the prison director specifies the time and manner pertaining to visits by lawyers, family members and other persons.
2. Each prisoner is allowed to adequately and timely inform their family members and lawyer about the time and manner of visits.
3. There are adequate premises for visits, meeting the security and hygienic standards.
4. Visitation premises enable the security staff to monitor visits, without listening to conversations with visitors.
5. The search of visitors and their belongings is performed in accordance with the prescribed standards pertaining to the work of security services.
6. Visitors are treated correctly, with respect in terms of their integrity and human dignity.
7. The institution has a separate room where prisoners can receive a visit by their spouse without monitoring. The above room meets the prescribed requirements pertaining to accommodation of prisoners.
8. The institution registers all visits.
9. Rights pertaining to family visits are not related to assessments of prisoner's behaviour.
10. Extensions of visitation rights, approved to the prisoner as a privilege, are withdrawn in accordance with the criteria and manner of granting privileges.
11. The manner of using telephone booths is defined by a document issued by the prison director.
12. Telephone booths are placed so as to enable security staff to monitor the behaviour of prisoners while making phone calls, without being able to listen to conversations.

13. Any restriction imposed on prisoners in terms of using telephone boots is accompanied by a written document by the authorised body (court or director).
14. When there is a security need for the staff to listen to a telephone conversation, the prisoner in question must be duly informed prior to their using a telephone booth.
15. Prisoners do not use mobile phones to communicate with the outer world.
16. Prisoners are allowed to write letters to different bodies and authorities protecting their legal rights, and can do so without any restrictions or censorship.
17. Prisoners are allowed to have conversations with inspectors, ombudspersons, lawyers and other authorised persons, without the official staff being present.
18. Prisoners are allowed to become informed about events in the country and worldwide by means of the electronic media and the press.
19. Prisoners can voluntarily communicate with the media, respecting the aspect of security, risk assessment and their personal preferences (the choice of media and manner of communication).
20. The institution management undertakes all the necessary measures within its competence to enable prisoners to vote in local and general elections.
21. Granting privileges to prisoners follows the procedure prescribed by internal rules and rulebooks.
22. The personal record of each prisoner includes the precise list of granted privileges.
23. When granting privileges to prisoners, criteria prescribed by legislation and formal limitations must be respected.

IV. HEALTH CARE

Expected results

Prisoners serving their prison sentence or pre trial detention measure in a prison are provided with health care in accordance with standards applying to public health, with adequate cooperation with other healthcare institutions, including a number of preventive measures and activities.

Standard

Healthcare services offered to prisoners are of high quality and available to each prisoner.

Indicators

1. Healthcare services for prisoners are offered by a health service as an organisational unit of the prison, which has sufficient staff and which directly cooperates with healthcare institutions in the community. (EPR 40.1, 41.1, 51.4, BiH EL art. 19, RS EL art 20, FBiH EL art. 46)
2. The institutions' healthcare service provides prisoners with specialist examinations in and out of the institution in cooperation with other healthcare institutions. (EPR 40.5, 41.3, 41.5, BiH EL art. 73, RS EL art. 98/1, 99/1, 101, FBiH EL art. 46, 47)

3. The prison's medical practitioner examines each prisoner immediately upon admission, during their sentence serving, immediately before release from the prison, entering all this medical information in the medical record, taking into account the usual rules pertaining to confidentiality of medical information. (EPR 42.1, 42.2, 42.3a, BiH EL art. 63, RS EL art. 72/2, FBiH EL art. 34, 45, 113/3, 100)
4. The medical practitioner examines a general health and physical condition of each prisoner. (EPR 42.3b, BiH EL art. 63, RS EL art. 72/2, FBiH EL art. 45, 46)
5. Introduced procedures enable prisoners to have daily access to medical staff, as well as in emergency situations. (EPR 41.2, BiH EL art. 73, RS EL art. 97/1, FBiH EL art. 45, 100)
6. Healthcare service offers psychiatric treatment to all the prisoners who need it. (EPR 47.2, BiH EL art. 73, 74, 75, RS EL art. 101, FBiH EL art. 49)
7. There are procedures for medical practitioners to visit and examine prisoners placed in solitary confinement, isolation or separate units. (EPR 43.2, BiH EL art. 104, RS EL art. 134/3, FBiH EL art. 100)
8. There are relevant procedures for the prison staff to supervise food preparation and distribution, its quantity, quality, the conditions pertaining to personal and collective hygiene, as well as heating, light, air conditioning and laundry. (EPR 44, RS EL art. 80/4, 5, FBiH EL art. 100)
9. There are relevant procedures for prisoners infected by HIV or some other infectious disease. (EPR 42.3f, g, RS EL art. 108, FBiH EL art. 100)
10. Prisoners developing mental illness or show signs of severe mental problems while serving their sentence are placed in a relevant healthcare institution. (EPR 42.3.b, 47.1, BiH EL art. 73, 140, RS EL art. 101/1, FBiH EL art. 49)
11. A medical practitioner notifies the prison director whenever they find that the condition of a prisoner in solitary confinement or isolation is put at risk (EPR 43.3, BiH EL art. 104, 107, RS EL art. 105, FBiH EL art. 100)
12. A medical practitioner, through the prison management, submits a report to competent institution whenever they observe on a prisoner signs that may be a result of violence. (EPR 43.3c, RS EL art. 105, FBiH EL art. 100)
13. A medical practitioner follows the procedure that applies when a prisoner refuses food – hunger strike. (BiH EL art. 70, RS EL art. 106, FBiH EL art. 50)
14. There are activities that aim at reducing drug abuse. (EPR 42.3d, BiH EL art. 76, FBiH EL art. 100)
15. If the prisoner is not able to, the prison will notify family members about the medical condition of the prisoner. (EPR 42.3a, BiH EL art. 83, RS EL art. 103, FBiH EL art. 56/1)
16. No experiments are conducted on prisoners. (EPR 48.1 and 2, BiH EL art. 75, RS EL art. 2/4)

General information

1. Organisational status
2. Conditions pertaining to healthcare provision, the number of medical facilities, infirmary and the existing equipment.

Methodology

1. Interview medical practitioners and other medical staff
2. Inspect the rulebook on internal organisation and classification of the institution
3. Inspect all the premises used for healthcare provision
4. Inspect the existing equipment
5. Inspect prescribed records, documentation and the status of medical records of prisoners
6. Interview prisoners

Relevant indicators

1. Prisoners are provided with health care by an organised and adequately staffed service as a separate organisational unit of the prison.
2. When no specialist examination or adequate medical treatment can be offered by the prison, prisoners are treated in a health care institution in the community.
3. Upon admission and immediately before release, prisoners must undergo a mandatory medical examination, while the medical findings and assessments of their condition are registered in patients' medical records.
4. While serving the sentence, all medical findings and opinions are registered in medical records that are treated so as not to disclose confidential information.
5. Working organisation of the health service and relevant medical examination procedures are such as to enable prisoners to apply for medical assistance at all times and, if the prison cannot provide adequate medical practitioners, such assistance is immediately given by a health care institution in the community.
6. Special care is taken to offer prisoners adequate psychiatric treatment and, should a patient develop a mental illness or show signs of severe mental problems, they are placed in a relevant psychiatric institution in the community.
7. Prisoners put in solitary confinement, isolation or a separate unit are visited by a medical practitioner or a nurse on a daily basis and, whenever it is assessed that their further stay there would be detrimental to their health, a suggestion is made to the prison director that their stay in the above place be terminated.
8. Medical staff, in cooperation with other organisational units, makes daily inspection of food, food storage, food preparation and food distribution, food quality and quantity, conditions of personal and collective hygiene, and conditions pertaining to heating, light, air conditioning and laundry, and registers all relevant observations in prescribed records and, when necessary, notifies the prison director.
9. The procedures prescribed with regard to persons infected by HIV, some infectious disease or refusing food should entirely meet the applicable standards and ensure that the above persons have full medical care compatible with that at the national level.
10. If signs of violence are observed during a medical examination of a prisoner, the medical practitioner makes a relevant report and submits it to competent institutions through the prison management.
11. There are ongoing activities on prevention and rehabilitation of prisoners addicted to drugs or alcohol.

12. In the spirit of medical ethics, a prisoner suffering from a severe disease is allowed to notify their family accordingly and, should they not be able to do so, it will be done by the prison.
13. Inspection findings show that there are no experiments conducted on prisoners.

V. ORDER, DISCIPLINE AND PUNISHMENT

Expected results

Prisoners should be provided with necessary information and information about substantive regulations, by-laws and prison regulations governing activities representing violation of prison discipline, about legal consequences of such activities, as well as information about proceedings for establishing such activities, rights and defence in such proceedings, manner in which such proceedings are conducted, imposition of proper measures, remedies, enforcement of such measures and the conditions of their enforcement.

Standard

Upon admission to a prison, prisoners have the right to be informed about treatment, internal order, dissemination of relevant information, and about their rights and duties.

Indicators

1. A treatment plan is developed for each prisoner (EPR 16, BiH EL art. 136 and 137, RS EL art. 73, 74, FBiH EL art. 34 para. 3)
2. At the beginning of their sentence serving, prisoners are informed about the rules and obligations during prison sentence serving. (EPR 31, BiH EL art. 57, FBiH EL art. 36 para. 1, RS EL art. 73)
3. At the beginning of their sentence serving, prisoners are informed about the way in which to exercise their rights, violation of discipline and punishments imposed for such violation. (EPR 30.1, BiH EL art. 57, RS EL art. 73, FBiH EL art. 36 para. 1).
4. Laws and other regulations governing prison sentence serving, as well as regulations governing disciplinary procedure, are available to prisoners. (EPR 30.1, 30.2, BiH EL art. 57, RS EL art. 73 para. 7, FBiH EL art. 36 para. 2)

Standard

Prisoners have to right to information about behaviour defined as disciplinary offence, types of disciplinary offence, persons authorised to initiate a disciplinary procedure in case of disciplinary offence and special rights with regard to punishment.

Indicators

1. Activities on the part of prisoners constituting disciplinary offence are adequately defined. (EPR 57.1, BiH EL art. 100, RS EL art. 126, 127, 128, FBiH EL art. 93 para. 1 and 2)

2. Types of disciplinary offence, i.e. activities or omissions and commissions representing serious or less serious disciplinary offences are adequately defined. (EPR 57.2, BiH EL art. 100, RS EL art. 127, 128, FBiH EL art. 93 para. 3 and 5)
3. It is adequately defined who can initiate a disciplinary procedure, so as to prevent collective or double punishment for the same offence. (EPR 63, BiH EL art. 101, RS EL art. 130, FBiH EL art. 94 para. 1 and 2)

Standard

Prisoners are entitled to information about punishments prescribed for disciplinary offences, about the severity and duration of disciplinary sanctions that may be imposed, about the authority competent for the procedure and imposition of disciplinary sanctions, about the right to hire as their defence counsel any person they trust, and about the principle of urgency of disciplinary procedure, the deadline for its initiation and the right to a remedy.

Indicators

1. There are prescribed punishments that may be imposed for disciplinary offences, their severity and duration. (EPR 57.2, BiH EL art. 102, RS EL art. 129, FBiH EL art. 96 para. 1 and 2)
2. It is defined what authority is competent for disciplinary procedures and imposition of disciplinary sanctions. (EPR 57.2, BiH EL art. 103, RS EL art. 130, FBiH EL art. 97 para. 1)
3. Legislation includes a provision on the right of the prisoner to be informed about a disciplinary procedure initiated against them, and to defend themselves, present favourable circumstances and hire a defence counsel of their own choice. (EPR 59, BiH EL art. 57 and 103, RS EL art. 131, FBiH EL art. 97 para. 2)
4. Deadlines for initiating disciplinary procedures are adequately defined, as well as the urgency thereof. (EPR 58, BiH EL art. 101 and 103, RS EL art. 131, FBiH EL art.)
5. Prisoners can appeal the decision issued by the commission for imposing disciplinary sanctions, within a deadline stipulated by law. (EPR 57.2, BiH EL art. 103, RS EL art. 130, FBiH EL art. 97 para. 5)

Standard

The disciplinary sanction of solitary confinement can be imposed on prisoners only in exceptional circumstances, only for offences defined by law.

Indicators

1. The disciplinary sanction of solitary confinement is imposed on prisoners only in cases defined by law. (EPR 60.5, BiH EL art. 103, RS EL art. 129, FBiH EL art. 96 para. 2 and 4)

Standard

If the conditions for the enforcement of the solitary confinement sanction are met, prisoners have the right to serve this disciplinary punishment in prescribed sanitary and health care condition.

Indicators

1. While in solitary confinement, prisoners have all the adequate health care and sanitary conditions. (EPR 43-46, BiH EL art. 104, RS EL art. 134, FBiH EL art. 98 para. 2)
2. A medical practitioner or medical staff pays particular attention to the health of persons held under conditions of solitary confinement and notify the prison director whenever the mental of physical health of such persons is threatened by the conditions of solitary confinement. (EPR 43, BiH EL art. 104, RS EL art. 132 and 135, FBiH EL art. 98 para. 1)
3. While being held under conditions of solitary confinement, prisoners are examined by the prison medical practitioner on a daily basis. (EPR 43.2, BiH EL art. 104, RS EL art. 134, FBiH EL art. 99 para. 5)
4. Prisoners held under conditions of solitary confinement are visited by a personal officer or other authorised person who enters their observation into solitary confinement registry. (EPR 44, BiH EL art. 104, RS EL art. 134, FBiH EL art.)
5. Solitary confinement premises have sanitary facilities and water available. (EPR 19.3, 22.5, BiH EL art. 104, RS EL art. 134, FBiH EL art.)

Standard

Solitary confinement conditions must not be inhuman or degrading and should be suitable in terms of climatic conditions, taking into consideration the floor space of the solitary cell, cubic content of air, lighting, heating and furniture. Within the cell there is an alarm that the prisoner can use to contact the security officer on duty. Prisoners held in solitary confinement have the right to rest, read, write, to be in fresh air and to attend classes if they are enrolled in some.

Indicators

1. The solitary confinement cell is of the surface and cubic content prescribed by the minimum conditions, i.e. five square metres in surface and no less than ten cubic metres of air. (EPR 18.1, 18.3, BiH EL art. 65, 66, 104, RS EL art. 134)
2. The solitary cell window is large enough to enable the prisoner to read in natural light in the usual circumstances, while the artificial light meets the applicable technical standards. (EPR 18.2, BiH EL art. 66 and 104, RS EL art. 75)
3. The solitary confinement cell is heated in accordance with climatic conditions, and it has a bed and bedding, a desk, a chair and a locker. (EPR 18.1 and 18.3, BiH EL art. 66, 104, RS EL art. 75)
4. The solitary confinement cell has a control opening and an internal signal for contacting the guard on duty. (EPR 18.2.c, BiH EL art. 104, RS EL art. 78)

5. Prisoners held in solitary confinement can read books, newspapers and send and receive correspondence without restrictions. (EPR 23, 24, BiH EL art. 104, RS EL art. 134)
6. Prisoners receiving education in a prison is guaranteed the attendance of courses while held under conditions of solitary confinement? (BIH EL art. 104, RS EL art. , FBiH EL)
7. Prisoners held under conditions of solitary confinement have the right to be in the open air for at least one hour a day. (EPR 27.1, BiH EL art. 84 and 104, RS EL art. 134)

General information

1. There has been committed a disciplinary offence for which the sanction of solitary confinement may be imposed.
2. Legally defined conditions for imposing the disciplinary sanction of solitary confinement are met.
3. The prisoner is medically fit to be held in solitary confinement.
4. There is a relevant opinion of authorised professionals.
5. Relevant sanitary and health care conditions are met.

Methodology

1. Consult the rulebook on the internal order of the prison.
2. Consult the decision on the appointment of a disciplinary commission.
3. Consult the documentation on conducting disciplinary procedures.
4. Check whether the statute of limitation has expired with regard to the above procedure.
5. Interview managing and other staff.

Relevant general indicators

1. There is a motion for initiating a disciplinary procedure.
2. Depending on the moment of commission of a disciplinary offence, ascertain whether the persons were taken to a separate room and whether the prison director is informed.
3. A disciplinary procedure was initiated within the prescribed deadline with regard to the disciplinary offence commission.
4. A motion to initiate a disciplinary procedure has been delivered to the prisoner in question.
5. The right to defence of the prisoner having committed a disciplinary offence is respected during the disciplinary procedure.
6. The imposed disciplinary sanction is legal and enforceable.

Relevant indicators

Enforcement of a disciplinary sanction

1. The premises serving for the enforcement of a disciplinary sanction (hereinafter: "the solitary cell") meets the basic sanitary and health care conditions.
2. The solitary cell is of the prescribed floor surface.
3. The solitary cell is of the prescribed cubic content.
4. The solitary cell has enough natural light enabling a visual contact in the cell, with the possibility of normal reading.
5. The artificial light meets the recognised technical conditions.
6. The solitary cell can be heated in accordance with climatic conditions.
7. The solitary cell has a bed with bedding, a desk, a chair and a locker fastened to the floor and the wall, respectively.
8. The cot must include the possibility of fastening it to the wall and is used for the afternoon rest only.
9. The solitary cell has sanitary facilities with water.
10. Bedding includes no sheets.
11. The afternoon rest lasts for a prescribed period of time, in accordance with daily activities defined by the prison director.
12. There is a control opening allowing the inside of the cell to be surveyed, and there is a signalling device to contact the guard securing the cell.
13. Prisoners in solitary cells can receive books and newspapers, and can have their correspondence when necessary.
14. Account is taken of the need to attend classes for prisoners receiving their education.
15. Exercise in the open air lasts in accordance with the prescribed minimum.
16. The personal officer and the prison's medical practitioner make regular visits according to the weekly minimum.
17. The medical practitioner makes daily examinations during the conditions of solitary confinement.
18. Observations made by the medical practitioner and other authorised persons are entered into the solitary confinement registry.
19. There are clear procedures observed by the guard monitoring the solitary cell.

VI. SECURITY

Expected results

The prison enables each prisoner serving a prison sentence to feel safe at all times, respecting their personality and human dignity.

Standard

While serving a prison sentence, the prisoner is convinced that the formal system and the organisation of the prison in question can offer them a safe environment and can

guarantee that they will not be subject to any form of torture or other forms of cruel, inhuman or degrading treatment or experiment.

General indicators

1. The prison has a security service whose members take care of the security of the prison in accordance with applicable rules. (EPR 83b, BiH EL 17, RS EL art. 17, art. 18 para. 6, FBIH EL art. 134.)
2. Upon employment, a careful selection of security service staff is made, so that the purpose of the prison system may be clear at any given time. (EPR 76, 72.2, BiH EL 21 through 28, RS EL art. 18 para. 2, 49, 50, 51 and 52, FBIH EL art. 129)
3. Training of security service staff is mandatory and continuous. (EPR 81.1, 2, 3, 4, BiH EL 26 and 36, RS EL art. 49, FBIH EL art. 142 para. 1)

Special standards relating to security

Admission of prisoners into prison

Standard

Following clear admission procedures, activities immediately after the admission and making initial observations of prisoners in terms of security reduce the risk of negative surprises and send a clear message to prisoners that they can feel safe and that their personality and human dignity will be respected.

Indicators

1. There is a clear admission procedure relating to sentenced prisoners. (EPR 151, BiH EL 35, 136, 137, RS EL art. 72, 73, FBIH EL art. 32 and 33)
2. All newly admitted prisoners are immediately directed to a medical examination, no later than 24 hours following their admission, and respective medical records are established. (EPR 16 a, 42.1, BiH EL 63, RS EL art. 72, 105, FBIH EL art. 34)
3. There are relevant activities and procedures for the assessment of prisoners while at the admission unit, definition of the initial treatment and subsequent placement. (EPR 15, 16, BiH EL 137 and 138, RS EL art. 73, 74, 116, FBIH EL art. 34 para. 2)

Emergency situations

1. There are procedures for taking action in all emergency situations, and the staff trained to act accordingly in such circumstances. (EPR 52.5, 81.1, 81.2, RS EL art. 18, FBIH EL art. 100)
2. A medical practitioner and at least one security service staff trained to give first aid in such situations are available at all times. (EPR 41.1, 41.4, RS EL art. 18 para. 6, FBIH EL art. 45 para. 1, 46 para. 1, and art. 100)
3. There are detailed procedures for the cases of fire and emergency evacuation; they are clearly displayed and everyone is informed about them. (EPR 52.5, RS EL art. 18 para. 6, FBIH EL art. 100)

4. When the alarm sounds, a response from cells is made within the defined period of time, considering the fact that the emergency situation in question may imply that lives are in danger. (EPR 18.2c, 52.4, RS EL art. 18 para. 6, FBIH EL art. 100)
5. Control openings on cell doors are not closed. (EPR 52.2, FBiH EL art. 40)
6. The prison director and other managerial staff may make an unannounced visit at night to ascertain that security procedures are adequate. (EPR 52.2, BiH EL art. 14 para. 1 and 3, art. 16 para. 1 and 18. para. 6, FBiH EL art. 123 para. 7)

Prevention of escape

Standard

Security measures applied to prisoners offer a sufficient guarantee in terms of preventing prisoners to escape while serving prison sentence.

Indicators

1. Prisoners are placed in prisons with regard to the level of security necessary to prevent their escape. (EPR 51.1, RS EL art. 10, FBiH EL art. 21 and 121 para. 1)
2. In addition to physical and technical barriers and means, walls, technical means of security forming a barrier to prisoners' escape, there is also a security service. (EPR 51.2, BiH EL 17, RS EL art. 10 para. 4, art. 18, FBiH EL art. 134 para. 1)
3. Upon admission, prisoners are assessed in terms of pedagogical, psychological, social, medical and security aspects. (EPR 51.3, BiH EL 137 and 138, RS EL art. 73 para. 4, 74 para. 1 and 116 para. 1, FBiH EL art. 13 para. 2 and 34 para. 3)
4. On the basis of the assessment made at the admission unit, prisoners are, on the basis of the initial treatment, placed in adequate prison units (EPR 51.4, BiH EL 137 and 138, RS EL art. 13 para. 4, 74 para. 1, FBiH EL art. 34 para. 3 and art. 100)
5. Each prisoner violating order and security and posing a risk in terms of escape can be imposed certain measures for maintaining order and security. (EPR 51.5, RS EL art. 137, 138, FBiH EL art. 52 para. 1)

Prevention of injuries

Standard

A proper assessment of prisoners, particularly in terms of risks of injuries, with clear procedures in place, can reduce the risk of inflicting injuries on other prisoners, of self-inflicted injuries and suicide.

Indicators

1. Upon admission and while serving their prison sentence, prisoners are assessed to ascertain whether there is a risk of inflicting injuries to other prisoners, official staff or whether there is a risk of self-injury or suicide. (EPR

52.1, BiH EL 137 and 138, RS EL art. 73 para. 1, 74 para. 1, art. 140, FBiH EL art. 34 para. 3 and art. 100)
2. There are clear procedures for treating such prisoners so as to reduce to a minimum the dangers to prisoners and to other prisoners or the staff. (EPR 52.2, RS EL art. 140, art. 18 para. 7, FBiH EL art. 36 para. 1, art. 100)
3. Response to those identified as prone to self-injury is comprehensive and includes the following:
    - preventive measures including the removal of dangerous objects and frequent observation of places that could be used to commit suicide; proactive measures, including meetings and discussions about the case in question, enabling access to other persons and informing them about the case (members of the prison staff and others who are not), activities reducing boredom or monotony, and support in terms of mental health.
4. In addition to regulations relating to criminal sanction enforcement, other regulations relating to health care as well as international standards and regulations relating to ethical conduct of medical practitioners and other staff are applied to persons prone to injuring others, to self-injury and to suicide. (EPR 52.5, BiH EL art. 71 through 76, RS EL art. 107 para. 4, FBiH EL art. 16, 49 and 50[74])

Specific measures for reducing the risk of escape and danger to others

Standard

In order to maintain order and discipline and to maintain general security, there are clearly defined special measures to be applied to prisoners.

Indicators

1. Special measures for reducing the risk of escape and dangers to others are applied in exceptional circumstances. (EPR 53.1, BiH EL art. 35 through 40, RS EL art. 137, FBiH EL art. 52 para. 1 and art. 100)
2. There are clearly defined procedures and activities with regard to application of special measures. (EPR 53.2. BiH EL 35 through 40, RS EL art. 138, FBiH EL art. 144, art. 145, art. 100)
3. The application of special measures is individual and is not treated as disciplinary punishment. (EPR 53.3, BiH EL 35 through 40, RS EL art. 137 para. 4, FBiH EL art. 52 para. 2)
4. Prisoners are informed about the decision on application of special measures and are, as much as possible, given the reasons for such a decision.
5. The reasons to withdraw information about the decision should be legally justified.

[74] General provisions.

Instruments of restraint – the use of force

Standard

Within the measures of restraint, force is used as a last resort and strictly in accordance with applicable legislation and procedures. EPR 64

Indicators

1. Instruments of restraint defined by law and regulations based on law are applied to prisoners. (EPR 68.4, RS EL art. 144, art. 145, FBiH EL art. 144 and art. 145)
2. Force is used only when necessary to prevent escape, a physical assault on other persons, self-injury or suicide, intentional damage to property, as well as active and passive resistance. (EPR 64.1, BiH EL 35 through 40, RS EL art. 146 para. 1, FBiH EL art. 144 and art. 145 para. 1 items 1 through 5)
3. The use of force implies the application of the measure that involves a minimum risk to the life and health of the prisoner, that successfully solves resistance and that is proportionate to the potential danger. (EPR 64.2, BiH EL 35 through 40, RS EL 145 para. 2, FBiH EL art. 145 para. 2[75])
4. There are clearly defined procedures with regard to the use of force. (EPR 65, BiH EL 35 through 40, RS EL art. 18 para. 6, art. 147, FBiH EL art. 145 para. 2 through 5, art. 147 and art. 148)
5. There are procedures of reporting and justifying the application of instruments of restraint. (EPR 68.4, BiH EL 35 through 40, RS EL art. 147 para. 3, 4, 5 and 6, FBiH EL art. 145 para. 2 through 5, art. 147 and art. 148)
6. In cases when the security service is not able to prevent serious violation of order, there are clearly defined procedures with regard to the use of special restraining group of staff. (EPR 67.1, RS EL art. 148)

Violence committed by prisoners

Standard

Prisoners are protected from violence and from injuries inflicted by other prisoners.

Indicators

1. The prison management has developed a plan for the prevention of violence among prisoners, including verbal abuse. (EPR 52.2, 74, RS EL art. 52 para. 1, FBiH EL art. 100)
2. There is enough staff members tasked with communicating with prisoners to ensure order and discipline, protect weak prisoners and prevent fighting. (EPR 52.2, 74, BiH EL 35, RS EL art. 12, art. 16, art. 18, FBiH EL art. 134 para. 2)
3. There is a valid documented assessment of prisoners. (EPR 18.6, RS EL art. 74, FBiH EL art. 125)

[75] An indirect provision.

The use of firearms

Standard

When on duty out of the prison, its security service can be armed and can use firearms only when permitted by law.

Indicators

1. It is prohibited to bring firearms in the complex of the prison except in cases when violation of discipline is of such intensity that it is necessary to use firearms to restore order and discipline and to protect the lives of prisoners, official and other staff in the prison. (EPR 69.1, BiH EL 35 through 40, RS EL art. 149, art. 150)
2. The use of firearms is prescribed by the law on enforcement of criminal sanctions and the rulebook on the use of firearms. (EPR 69.1, BiH EL 35 through 40, RS EL art. 18 para. 5, art. 18 para. 6 and art. 150, FBiH EL art. 145 para. 2 and art. 148. para. 2)
3. The security service staff is trained to carry and use firearms. (EPR 69.3, BiH EL 35 through 40, RS EL art. 18 para. 6, art. 49, art. 50, art. 51, FBiH EL art. 136 para. 3)

General information

1. The organisational status of the security service, staffing with respect to job classification;
2. Training, equipment and team work of the security service;
3. Cooperation with other organisational units (services) within the prison.

Methodology

1. Consult the rulebook on the internal organisation and job classification
2. Consult the prescribed records and documentation
3. Inspect the existing equipment of the security service
4. Survey different posts and consulting the relevant documentation
5. Interview the managerial and other staff of the security service

Relevant general indicators

1. The security service is established pursuant to the law on enforcement of criminal sanctions.
2. Sufficiently staffed, equipped and trained to carry out tasks within its competence.
3. The security service staff carries out their tasks and duties in accordance with the law on enforcement of criminal sanctions, by-laws, instructions and orders.

Relevant specific indicators

Admission of prisoners

1. During admission, security service staff acts in accordance with the law on enforcement of criminal sanctions, by-laws, instructions and orders.
2. There are clearly defined procedures observed by all security service staff during admission.
3. Immediately, or in exceptional circumstances 24 hours following admission, all prisoners are examined by the prison medical practitioner and relevant medical records are duly established.
4. While at the admission unit, prisoners are observed by a psychologist, pedagogue, social worker, psychiatrist and criminologist, relevant risks are assessed, the initial treatment defined and prisoners included into the wider prison community.

Emergency situation

1. Procedures for taking action in emergency situations are precisely and clearly defined, and are available at every post.
2. All employees are trained to give first aid and a medical practitioner or at least one security service staff trained to give first aid in such situations are available at all times.
3. In case that a prisoner cannot be given first aid, there is a clearly defined procedure for further actions in order to offer adequate medical assistance.
4. All prisoners are trained in fire prevention measures and their skills in terms of fire extinguishing activities are regularly tested.
5. The prison has adequate fire extinguishers that are regularly inspected and serviced in accordance with relevant fire prevention legislation.
6. The prison has a separate trained and equipped group, ready to apply fire extinguishing procedures at all times.
7. All the premises used by prisoners are equipped with adequate alarms to be used, if necessary, to contact the staff.
8. The prison director and managers of organisational units regularly test the response of the official staff in emergency situations.
9. Regular rounds of the prison by the director and their assistants, inspecting the operation and actions taken by the official staff in accordance with relevant plans and procedure are the form of prevention of causes that may lead to emergency situations.

Prevention of escape

1. Prisoners are sent to serve the sentence of imprisonment pursuant to the Rulebook on the criteria for allocation of prisoners.
2. Observing prisoners upon admission and assessing relevant risks represent the basis for determining the initial treatment and placement of prisoners within the prison.
3. Fencing walls and material and technical security is the main barrier to prisoners in their attempts to escape.
4. There are regular assessments of all prisoners in terms of security and the relevant staff is informed about the above assessments.

5. Special measures for maintaining order and security are applied in accordance with the law on enforcement of criminal sanctions, by-laws, orders, instructions and relevant procedures.

Prevention of injuries

1. Upon admission to sentence serving, on the basis of findings and opinions of relevant experts in the admission unit, prisoners are assessed in terms of their personal security and possible injury infliction to other persons.
2. Relevant staff is informed about such findings, opinions and possible reactions.
3. Such persons are to receive a special treatment.
4. There are relevant procedures for situations requiring the prevention of injuries.
5. All objects that might serve to inflict injuries are removed, and such persons are put under intense surveillance.
6. In addition to regulations relating to criminal sanction enforcement, other regulations relating to health care as well as international standards and regulations relating to ethical conduct of medical practitioners and other staff are applied to persons prone to injuring others and self-injury.

Special measures for reducing the risk of escape and danger to others

1. Special measures for reducing the risk of escape and danger to others are applied in exceptional circumstances.
2. Special measures are applied in accordance with law and with clearly defined procedures.
3. The application of special measures is not treated as disciplinary punishment.
4. Prisoners are informed about the application of special measures except in cases justified by law.

The use of force

1. Only those measures of coercion prescribed by law are applied to prisoners.
2. The use of force or instruments of restraint are applied only when strictly necessary.
3. Force is used only when necessary to prevent escape, a physical assault on other persons, self-injury or suicide, intentional damage to property, as well as active and passive resistance.
4. The use of force implies the application of the measure that involves a minimum risk to the life and health of the prisoner.
5. The use of force is proportionate to the potential danger.
6. There are clearly defined procedures and activities relating to the use of force.
7. Each instance of the use of force implies the procedure of reporting and justifying the above use.
8. A special restraining group is engaged depending on the degree in which order and security are violated by prisoners.
9. Members of the special group act in accordance with the Law on enforcement of criminal sanctions and the Rulebook on the engagement of the special group.

Violence committed by prisoners

1. There is a plan with clearly defined procedures for suppression of violence committed by prisoners.
2. Assessments of prisoners in terms of violence are regularly updated.
3. All members of the security service are informed about an assessment that a prisoner can be violent against other prisoners and the staff.
4. In addition to daily tasks of the security service, there are also special tasks in terms of increased surveillance of violent prisoners, as well as actions to be taken in case of violence.
5. The security service does not allow acts of verbal violence on the part of prisoners.
6. There are clearly defined procedures observed by the security service in order to prevent physical and verbal violence.
7. The treatment service, in cooperation with the security service, implements relevant programmes for the prevention of violence.
8. Each act of violence in disciplinary terms is treated as a severe disciplinary offence.

The use of firearms

1. The security service has a sufficient quantity of firearm of the appropriate calibre.
2. The security service staff is trained to carry, handle and use firearms.
3. Through the practice of shooting, there is a regular training in terms of the use of firearms.
4. Firearms are kept and maintained in an appropriate manner.
5. Firearms are used only in situations defined by the Law on enforcement of criminal sanctions.
6. Relevant procedures are observed while using firearms.
7. Bringing firearms into the complex of the prison is an exception requiring the approval of the prison director for the purpose of restoring order and security in the prison and protect the lives of prisoners, official and other staff present in the prison at a given moment.
8. The reporting and justification procedures are observed in any instance of the use of firearms.

VII. SUPERVISION OVER THE ORGANISATION AND WORK OF PRISONS

Expected results

Establishing public control over the management of prisons in a fair and just way in order to maintain a continuous protection of the rights of prisoners and their families by guaranteeing the observance and implementation of recognised procedures on the part of the prison staff in all the aspects of prison life.

Standard

Inspection conducted by persons with special authorisations.

Inspection in terms of the implementation of regulations governing the procedure and organisation of the enforcement of criminal sanctions is carried out by professionals with relevant experiences, who are independent in their work and are accountable to the competent bodies, or the authorities that appoint them and discharge them from duty.

Indicators:

1. Inspection of the implementation of the enforcement law and regulations adopted on the basis of it is carried out by the Ministry through its inspectors for the enforcement of criminal sanctions, who are officers with special powers (hereinafter: "inspectors"). (BiH EL art. 46, RS EL art. 56 para. 2, FBiH EL art. 152 para. 1 and 3)
2. Inspectors act independently while performing inspection tasks, while specific inspections can be carried out upon a request by the minister. (BiH EL art. 46, RS EL art. 57 para. 4, FBiH EL art. 152 para. 4)
3. Inspectors are responsible for supervising the implementation of provisions of the enforcement law and regulations adopted on the basis of it in all the institutions in BiH , FBiH, RS and Brčko District[76] with regard to persons serving a sentence of imprisonment imposed by the competent court or another body in accordance with law or a relevant treaty. (BiH EL art. 46, RS EL art. 57 para. 3, FBiH EL art. 152 para. 2)
4. When conduction an inspection, they have the right to request full cooperation and support of the prison staff that must enable proper inspection and offer necessary information, data and findings of facts important for the inspection. (BiH EL art. 46, RS EL art. 58, FBiH EL art. 154 para. 1)
5. Inspectors pay particular attention to supervision and monitoring of the implementation of human rights of prisoners, in accordance with applicable legislation and treaties. (BiH EL art. 46, RS EL art. 57, art. 62)

Standard

Inspection scope (the subject and individual items within inspection) – supervision of the implementation of the legal framework, implementation and proper application of regulations.

Inspectors' main task is to ascertain whether the relevant regulations are implemented and whether they are properly applied. In order to carry out the above task, inspectors undertake supervising activities with regard to the implementation of the law on enforcement of criminal sanctions, regulations adopted on the basis of this law and other regulations governing the field of criminal sanction enforcement in prisons. For the purpose of preventing and removing illegalities with regard to the implementation of the enforcement law and its regulations, inspectors undertake measured defined by the enforcement law and other relevant regulations.

[76] Depending on the territorial competence for inspection.

Indicators:

1. Inspection of the enforcement of criminal sanctions is defined by the enforcement law and implies the supervision over the following: working plans and programmes of prisons, certain services and officers of the prison, organisation and work of security services and treatment programme, organisation of main registries, admission and release unit, definition and implementation of treatment programmes, security and self-protection situation in the prison, legal and correct treatment of prisoners, organisation of prisoners' work in cooperation with an authorised professional from the Ministry, protection of prisoners' rights, accommodation standards, implementation of healthcare and hygienic measures, nutrition and provision of clothing prisoners. Inspection can include other activities, measures and tasks with regard to the criminal sanction enforcement system. (BiH EL art. 46, RS EL art. 57, FBiH EL art. 152 para. 2)
2. While conducting an inspection, inspectors have the right and duty to directly inspect the following: facilities and premises of the prison, official records, files and documentation, identification documents, data on prisoners. Inspectors can identify persons, interrogate them, take statements, make audio, photo and video records for the purpose of data authenticity, and can undertake other activities compatible with the purpose of the inspection being carried out. (BiH EL art. 46, RS EL art. 57, FBiH EL art. 152 para. 2)
3. For the purpose of inspections, inspectors can temporarily seize case files and documents and, if necessary, items that may serve the purpose of establishing the truth and facts of the case, or as evidence of violation of the enforcement law and provisions adopted on the basis of this law, which requires a written receipt. (BiH EL art. 46, RS EL art. 58)
4. While conducting an inspection, inspectors are obliged to protect information that, in line with provisions of this law and other regulations, represents an official or other type of secret. (BiH EL art. 46, RS EL art.53, FBiH EL art. 155/2)

Standard

Ensuring inspection results

Upon an inspection in a prison and a discussion with the prison management about facts and findings, inspectors undertake activities to collect the necessary factual material, which they register in accordance with provisions of the system governing the administrative area of criminal sanction enforcement, with subsidiary application of regulations relating to administrative bodies and recognised domestic and international standards. Upon establishing the facts, inspectors issue individual decisions in terms of removing the observed shortcomings and irregularities in applying relevant regulations, as well as in terms of measures and preventive activities to be taken

Indicators:

While carrying out inspection tasks, inspectors are obliged to make a report on facts established and submit it to the prison director and the minister. (BiH EL art. 49, RS EL art. 59 para. 1, FBiH EL art. 153 para. 1 and 2)

1. Inspectors have the power and duty to order measures and deadlines for removing the identified irregularities, as well as measures for promoting the work of the prison. (BiH EL art. 49, RS EL art. 59 para. 2, FBiH EL art. 153 para. 1)
2. When, during an inspection, inspectors identify a violation of the enforcement law, or when they establish that this law is not appropriately applied or is incorrectly applied, or a regulation adopted on the basis of this law or another regulation whose implementation inspectors supervise on the basis of an explicit provision of the above regulation relating to inspection, inspectors have the power and duty to order measures and deadlines for removing the identified irregularities, as well as measures for promoting the work of the prison. (BiH EL art. 49, RS EL art. 59 para. 2)
3. During and after the inspection, inspectors are obliged to take preventive actions in all situation when there can be reasonably expected that detrimental consequences will arise and the system of enforcing criminal sanctions, particularly the sentence of imprisonment, may be disrupted. (BiH EL art. 49, RS EL art. 59 para. 2)
4. The prison director may lodge a complaint to the ordered measures and deadlines. (BiH EL art. 49, RS EL art. 60 para. 1, FBiH EL art. 153 para. 4)
5. Inspectors are obliged to monitor the implementation of the above measures. Should they establish that the measures are not adequately implemented within the above deadlines, they initiate a procedure for establishing responsibility. (BiH EL art. 49, RS EL art. 60 para. 6)

Standard

Continuity and development of inspection for the purpose of promoting the system of organisation and enforcement of criminal sanctions

Inspections are registered in relevant records, together with the ordered administrative and other measures for removing irregularities in terms of the application of regulations and the prison's work. Such records compose a database for qualitative and quantitative analyses of the situation with regard to prison structure and enforcement of criminal sanction in a given prison, or a relevant state unit as a whole (BiH, F BiH, RS, BD BiH), in order to develop a policy and a legal framework for criminal sanction enforcement.

Indicators:

1. Inspectors keep records on conducted inspections and ordered measures. (BiH EL art. 49, RS EL art. 57 para. 5)
2. Inspectors submit to the minister an annual report on inspections conducted, identified state of facts and measures undertaken, together with proposals in terms of remedying violation of provisions of the enforcement law and regulations adopted on the basis of this law. The report may indicate regulation drawbacks and can suggest that certain legislative solutions be changed, explaining the content and direction of such changes. (BiH EL art. 49, RS EL art. 57 para. 3)
3. The report may be available to the public in accordance with provisions of regulations governing access to information, except for those parts whose

publishing is not in public interest and/or represents an official or other secret, which is established by relevant regulations. (BiH EL art. 49, RS EL art. 59 para. 8)

4. Inspectors at different levels, or of relevant state units, cooperate in order to coordinate activities related to inspection tasks in accordance with the constitutions, laws and relevant regulations of BiH, the FBiH, RS and the Brčko District of BiH. (BiH EL art. 10, RS EL art. 57 para. 5)

VIII. THE ROLE OF THE INSTITUTION OF HUMAN RIGHTS OMBUDSMAN OF BOSNIA AND HERZEGOVINA IN MONITORING AND IMPLEMENTING HUMAN RIGHTS IN PRISONS

Expected results

Prisoners and detainees serving the sentence of imprisonment may, without restrictions, lodge complaints, appeals and requests with an independent institution as a guardian of their rights.

Standards

Prisoners have the right to have confidential conversations with inspectors, ombudspersons, lawyers and other legally authorised persons, during which they can express and explain their dissatisfaction.
After making a visit, surveying and analysing the implementation of human rights in correctional institutions, the Institution of Human Rights Ombudsman of Bosnia and Herzegovina makes a report with relevant recommendations in order to remedy the identified violation of human rights.
The competent ministries and prisons the above recommendations refer to are obliged to inform the Institution of Ombudsman of BiH about the activities undertaken with regard to their implementation, within specified deadlines.

Indicators:

1. Correspondence addressed to the ombudsperson or the Institution from the place of detention, of imprisonment or of deprivation of liberty cannot be subject to any censorship and must not be opened.
2. Conversations between the ombudsperson or persons authorised by the ombudsperson can never be monitored nor can be interfered with. (Law on Ombudsman, art. 20[77])
3. Prisoners are able to have confidential conversations with inspectors, ombudspersons, lawyers and other authorised officers. (EPR 24.3, BiH EL art. 68)

[77] Law on the Ombudsman for Human Rights of Bosnia and Herzegovina (*Official Gazette of BiH*, No. 32/00, 19/02, 35/04 and 32/06 – hereinafter: "the Law on Ombudsman").

4. Prisoners are able to write letters without any censorship. (EPR 24.1, BiH EL art. 68)
5. Prisoners are able to lodge petitions, complaints and appeals, without restrictions, to competent bodies and authorities. (EPR 24.1, BiH EL art. 68)
6. A detainee or prisoner cannot be forbidden to lodge petitions, complaints and appeals. When such special correspondence is carried on with an official authority competent for dealing with these issues, the correspondence is confidential.
7. The prisoner can send a submission or a complaint against the decision of the director referred to in paragraph 5 hereof to the Ministry of Justice of BiH, the inspector in charge of supervising the work of the prison or the BiH ombudsman. The above submissions for protection of their rights can be made individually or in accumulation by prisoners, in accordance with their own choice and order and without restrictions. (BiH EL art. 140c)
8. During sentence serving, the measure of prohibition or supervision can be imposed and revoked by the prison director. The prisoner can send a submission or a complaint against the decision of the director referred to in paragraph 5 hereof to the Ministry of Justice of BiH, the inspector in charge of supervising the work of the prison or the BiH ombudsman. (PP art. 27)
9. Prisoners, individually or as a group, have enough opportunities to lodge a request or complaint with the prison director or any other competent body. If the request or complaint is rejected, the reasons thereof must be explained to the prisoner having lodged the request or complaint. The prisoner whose request or complaint is rejected can lodge an appeal against such decision with an independent body. Prisoners are not punished for having lodged the request or complaint. (EPR 70.1, 70.3, 70.4)

Methodology

- Visit all the facilities and premises used by prisoners
- Interview prisoners and detainees
- Interview the official staff
- Interview the prison director
- Inspect relevant documentation

List of questions

- Capacities and accommodation
- Legislation
- Security
- Health care
- Hygienic and sanitary conditions
- Nutrition
- Work and leisure activities
- Religious needs
- Complaints and appeals

Council of Europe
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Joint Project between
the European Union and the Council of Europe

"Efficient Prison Management in Bosnia and Herzegovina"

VI – ASSISTING IN THE DEVELOPMENT OF AN INDEPENDENT INSPECTION MECHANISM AS A FUNDAMENTAL SAFEGUARD AGAINST HUMAN RIGHTS VIOLATION IN PRISONS

Appendix 3

PROPOSED LEGISLATIVE CHANGES NECESSARY FOR IMPLEMENTING STEP 1

Sarajevo, April 2010

Within Step 1, the paper suggests that prison inspection be established as a unit within the ministry of justice, accountable to the minister of justice.

1. Define that the supervision over the work of institutions is within the competence of the ministry of justice;
2. Define that the supervision is performed through authorised persons – inspectors;
3. Define a unit for inspection and the responsibility of the unit head;
4. Define the institutions and individuals that may assist in the above supervision;
5. Define the supervision over the work of institutions in terms of inspection of their financial operations, labour relations, occupational safety, healthcare and sanitary protection of prisoners and detainees, conditions of food preparation by authorised bodies in accordance with separate legislation.

6. Define the content of inspection:
   - work plans and programmes of the institution,
   - organisation and work of the security service,
   - organisation and work of the treatment service,
   - organisation of main registers,
   - organisation and work of the admission-release unit,
   - development and implementation of treatment programmes,
   - application of disciplinary measures on prisoners,
   - implementation of healthcare and sanitary measures,
   - legal and correct treatment of prisoners with mandatory security measure of psychiatric treatment and addiction rehabilitation,
   - implementation of conditional release,
   - application of laws and other regulations governing the field of criminal sanction enforcement,
   - organisation of prisoners' work,
   - protection of prisoners' rights,
   - application of criteria for granting privileges,
   - conditions of the facilities, prison accommodation conditions, heating, nutrition, provision of clothing and footwear to prisoners, etc.
   - release as approved by the institution director,
   - inspect the system of complaints and appeals,
   - inspect the implementation of programmes for prisoners,
   - inspect the system of preparation for release from the institution.

7. Define obligations and duties of inspectors;
8. Embed safeguards assuring their independence;
9. Define that the manner of implementation is defined by the Rulebook and, within this rulebook, define an inspection manual;
10. Define the duties and obligations of prison directors and the entire staff during inspection and their cooperation, make available all the necessary documentation and information, and enable them to work;
11. Offer guarantees for conversations with prisoners without any of the prison staff being present;

12. When they find it necessary, inspectors can take official statements.

13. Report
- upon inspections, the inspector makes a report that is balanced, fair and open;
- for the purpose of eliminating the identified irregularities in work, the inspector identified certain measures and deadlines, and gives certain suggestions in terms of work improvement;
- in the final section of the report, the inspector offers a conclusion as to the conditions in the institution, and there will also be an assessment of the implementation of relevant standards;
- format of the report is defined by the rulebook.

14. The report is submitted to the minister and institution director.
15. The prison must observe the proposed measures and deadlines and must duly notify the head of the inspection unit.
16. Should there be grounds to suspect that a criminal offence defined in the Criminal Code has been committed, the inspector is obliged to notify the competent prosecutor's office accordingly.
17. Define informing the staff about the report.
18. Define informing prisoners about the report.
19. Precisely define publication of the report – the public nature of the report.
20. Define the possibility of lodging complaints, procedures and deadlines.
22. Define whether the minister's decision is final or an administrative dispute is possible.
23. What if the prison manager fails to implement the specified measures – define procedures.
24. Annual inspection report.

Head of the inspection unit would have to make an annual report on the work of prison inspection and submit it to the minister who would then submit it to the parliament.