



REPUBLIC OF SERBIA
PROTECTOR OF CITIZENS
Belgrade
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Заштитник грађана
Zaštitnik građana

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NATIONAL PREVENTIVE MECHANISM

MONITORING OF INSTITUTIONS WHERE PERSONS DEPRIVED OF THEIR LIBERTY
ARE HELD

Thematic report: Application of CPT principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic

Belgrade, May 2020

MANDATE OF THE NATIONAL PREVENTIVE MECHANISM

Under the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹ the National Preventive Mechanism (NPM) shall visit facilities where persons deprived of their liberty are held or may be held, to deter public authorities and officials from any form of torture or any other form of ill-treatment, as well as to provide direction to public authorities towards creating accommodation and other living conditions in facilities where persons deprived of their liberty are held in accordance with applicable regulations and standards.

NPM is entitled to: unhindered and unannounced access, at any time, to all facilities and premises where persons deprived of their liberty are held; speak in private with those persons and officials, who must cooperate regarding this matter, as well as with all other persons who may have information relevant to the treatment of persons deprived of their liberty; access all documentation relating any such person; make recommendations to the competent authorities in order to improve the treatment of persons deprived of their liberty and to improve the conditions in facilities where they are detained or imprisoned. After the visits, the NPM compiles reports and submits them to the visited facilities. After that, the NPM maintains a constant dialogue with the visited facility, as well as with the authority which the facility is a part of, in order to eliminate the identified shortcomings that may lead to torture, inhuman or degrading treatment.

Article 2a of the Law stipulates that the Protector of Citizens performs the NPM tasks and that in performing these tasks he cooperates with the ombudsmen of the autonomous provinces and associations whose statutes provide for the promotion and protection of human rights and freedoms, in accordance with the law.

A special organizational unit, the National Preventive Mechanism Department, which performs the NPM functions, has been formed in the institution of the Protector of Citizens.

The Protector of Citizens and the Ombudsman of the Autonomous Province of Vojvodina signed a Memorandum of Cooperation for performing NPM tasks,² which stipulates that the Provincial Ombudsman will actively participate in NPM monitoring team visits to the facilities where persons deprived of their liberty are held at the territory of AP Vojvodina.

¹ "Official Gazette of Serbia and Montenegro - International Agreements", Nos. 16/05 and 2/06 and "Official Gazette of RS - International Agreements", No. 7/11.

² Signed on 12 December 2011.

1. INFECTIOUS DISEASE OUTBREAK

Under Government Decision³ dated 10 March 2020, the coronavirus disease 2019 (COVID-19) caused by the virus SARS-CoV-2 was declared an infectious disease whose prevention and mitigation is of interest to the Republic of Serbia. Under the later Order of the Minister of Health⁴, dated 19 March 2020, the outbreak of the infectious disease COVID-19 was declared, an outbreak of greater epidemiological significance for the territory of the Republic of Serbia. At the same time, the World Health Organization (WHO) declared a pandemic of COVID-19 on 11 March 2020.⁵

The outbreak has created new challenges for public authorities and officials working in places of deprivation of liberty. Recognizing this, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) issued a Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic on 20 March 2020.⁶

On 27 March 2020, the NPM sent official letters to all administrative authorities in charge of the facilities where persons deprived of their liberty are held or may be held, reminding them that the prohibition of torture and inhuman or degrading treatment or punishment is absolute and that protective measures undertaken by the state to combat COVID-19 must never result in any form of ill-treatment of persons deprived of their liberty. He also pointed out CPT principles relating to the treatment of persons deprived of their liberty during the corona virus pandemic and called on all competent authorities and all institutions to adhere to them. The CPT principles, as well as the Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic, adopted on 25 March 2020, are published on the NPM website and are available in English and Serbian.⁷

In order to monitor compliance with CPT principles, the NPM maintained written communication with competent authorities and visited certain places of deprivation of liberty. Its findings are presented in this report.

³ 05 No. 53-2281/2020.

⁴ Number 512-02-00016/2020-10.

⁵ www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.

⁶ CPT/Inf(2020)13.

⁷ npm.rs/index.php?option=com_content&view=article&id=904:заштитник-грађана-забрана-мучења-и-нечовечног-или-поштовајућег-поступања-или-кажњавања-апсолутна&catid=108:2012-01-18-20-51-23&Itemid=71.

2. DATA ON VISITS

2.1. GENERAL DATA

FACILITIES	District Prison Belgrade	Penal-Correctional Institution Belgrade	Penal-Correctional Institution Belgrade Padinska Skela	Padinska Skela Reception Centre for Aliens	Penal-Correctional Institution Sremska Mitrovica
VISIT DATE	23 March	24 April			30 April
VISIT GROUNDS	NPM tasks, in accordance with Article 2a of the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment				
VISIT AIM	Monitoring the application of CPT principles on the treatment of persons deprived of their liberty during the coronavirus pandemic				
VISIT TYPE	Extraordinary visits				
VISIT ANNOUNCEMENT	Announced visits				
VISITED BY	Protector of Citizens				
TEAM	<p>Team Lead: Nataša Tanjević, PhD, <i>Deputy Protector of Citizens</i></p> <p>Team member: Marko Anojčić <i>Protector of Citizens/ National Preventive Mechanism Department</i></p>				

2.2. COURSE OF THE VISITS

Visits to all facilities began with discussions with the management, who provided information on the measures taken by the facility regarding the infectious disease outbreak. If necessary, the relevant documentation was inspected. The NPM then conducted unsupervised interviews with several randomly selected persons deprived of their liberty.

During these visits, the usual NPM methodology was adjusted to the circumstances of the infectious disease outbreak and the "do no harm" principle, i.e. the NPM team conducted their visits in such a way so as to prevent exposure of persons deprived of their liberty and the staff to the risk of infection. All visits were announced in advance; individual interviews were conducted through protective glass, where possible; protective equipment was used and the recommended physical distance was maintained in contact with the staff and individuals interviewed without protective glass. The NPM Team only exceptionally entered parts of the facilities where holding cells are located, they did not stay in the official premises longer than necessary and complied with all measures against the spread of infectious disease applied in the visited facility.

2.3. COOPERATION BETWEEN OFFICIALS AND THE NPM TEAM

The management and staff of all visited facilities have achieved full cooperation with the NPM Team and enabled it to act without hindrance in accordance with its mandate. Monitoring team members were provided requested information, a tour of the premises, access to the requested documentation and unsupervised interviews with persons deprived of their liberty.

3. COMPLIANCE WITH CPT PRINCIPLES

1. CPT PRINCIPLE

During the COVID-19 pandemic, the competent public authorities and all facilities where persons are deprived of their liberty in the territory of the Council of Europe must take all possible action to protect the health and safety of all persons deprived of their liberty, which will contribute to preserving the health and safety of staff. (basic principle).

NPM FINDINGS

There is a regular supply of protective equipment, i.e. a continuous supply of masks, gloves, disinfectants and other equipment, in all visited facilities. All staff in contact with persons deprived of their liberty and contracted persons have and must wear masks and gloves, which are distributed to other persons who wear them as needed. Protective masks and suits are produced in the Penal-Correctional Institution Sremska Mitrovica.

Mandatory body temperature measurement with contact-free thermometers has been introduced for all staff who come to their shift, as well as for all other persons who come to the correctional institution on any grounds.

Following the placement procedure, all new persons are placed in smaller rooms for a period of two weeks, during which they are under increased health supervision. In the District Prison Belgrade, a six dormitory block was vacated for newly placed persons who came to the country from abroad as of March 5. On the day of the visit, there were 13 persons in four dormitories in the block. All dormitories are cleaned on weekends, and insulation is cleaned daily. In the Penal-Correctional Institution Belgrade, all premises are cleaned three times a day, and persons deprived of their liberty are also engaged in cleaning the premises. Those who have been taken to hospital or absent from the Institution for any reason must be placed under quarantine and daily health monitoring by a doctor during the first 14 days of their return. The quarantine is located in the same block as the Health Care Service and it can accommodate 16-20 people, if necessary. In the Penal-Correctional Institution Sremska Mitrovica, newly placed persons are quarantined for 14 days, and if they come from abroad, they shall be quarantined for 28 days. Prison officials wear protective suits and visors in contact with them. All premises are cleaned daily, at least twice a day. In the Penal-Correctional Institution Belgrade - Padinska Skela, newly placed persons are quarantined for 30 days, they go for solitary walks and do not mix with other persons in the Institution. The rooms are cleaned 2-3 times a day.

In all facilities, hygiene packages are provided for those persons who cannot buy them in the canteen or receive them via post.

Masks, gloves and hygiene packages are provided for the staff and residents of the Padinska Skela Reception Centre for Aliens. All premises are cleaned several times a day and hygiene is at a satisfactory level. There are dedicated premises for 14-day or 28-day quarantine, in which case the quarantined persons go for a walk and use the living room separately. Mandatory body temperature measurement with contact-free thermometers has been introduced for all staff who come to their shift in the Reception Centre, as well as for all other persons who come to the Reception Centre on any grounds.

2. CPT PRINCIPLE

During the COVID-19 pandemic, the competent public authorities and all facilities where persons are deprived of their liberty in the territory of the Council of Europe must fully apply WHO guidelines on fighting the pandemic, as well as national health and clinical guidelines consistent with international standards.

NPM FINDINGS

All correctional institutions have been instructed to cooperate with the epidemiological services of the competent health care institute within the Ministry of Health, in order to provide equitable health care to persons deprived of liberty and staff with suspected infections. The text of the WHO publication "Preparedness, prevention and control of COVID-19 in prisons and other places of detention" has been translated and distributed to all correctional institutions.

In the event of persons developing symptoms of acute respiratory infection, the plan is to contact an epidemiologist in the competent health care institution, who shall be in charge of further treatment, as well as to isolate those who have been in direct contact with the symptomatic person. Depending on the test results, a person testing positive for the presence of the virus with a milder clinical presentation would be referred to inpatient treatment in the competent health care institution, and a person testing negative would be kept in 14-day isolation. An infected person with a more severe clinical presentation would be referred to the territorially competent clinical centres, which shall certainly be decided by the epidemiologist.

3. CPT PRINCIPLE

During the COVID-19 pandemic, the competent public authorities and all facilities where persons are deprived of their liberty in the territory of the Council of Europe must reinforce staff availability, and staff should receive all professional support, health and safety protection, as well as training necessary in order to be able to continue to fulfil their tasks.

NPM FINDING

The Administration for the Enforcement of Penal Sanctions has undertaken activities to organize the work of correctional institution staff, ensure safe functioning of the institutions and the implementation of actions to safeguard the staff from a potential viral infection. Correctional institutions operate in shifts, while taking care that spouses work different shifts.

In the District Prison Belgrade, which has a large number of detainees, due to the reduced number of hearings, it has been made possible for escort officers to be reassigned to other duties within the Security Service.

In the Penal-Correctional Institution Belgrade, the Security Service and the Health Care Service have about 3-4 thousand overtime hours per month. The presence of the virus was confirmed in one staff member from the Security Service, wherefore all other staff members who were in direct contact with him were directed to take annual leave.

In the Penal-Correctional Institution Belgrade – Padinska Skela, due to the smaller number of convicts in this institution, it is possible for some staff members to use their annual leave in this period.

In Padinska Skela Reception Centre for Aliens removals have been suspended and the number of aliens reduced, thus there is no problem with the number of available staff or the number of overtime hours.

4. CPT PRINCIPLE

During the COVID-19 pandemic, the competent public authorities and all facilities where persons are deprived of their liberty in the territory of the Council of Europe must ensure that any restrictive measures taken vis-à-vis persons deprived of their liberty to prevent the spread of the virus should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. Persons deprived of their liberty should receive comprehensive information, in a language they understand, about any such measures that were taken or will be taken.

NPM FINDING

All persons deprived of their liberty have been informed about the measures taken to prevent the spread of coronavirus, about the preventive measures and conduct in connection with the above, and notices were posted in the corridors of all visited correctional institutions.



Disease outbreak notification in the Penal-Correctional Institution Belgrade

Visits to convicts were initially limited to 15 minutes and one visitor, with mandatory use of protective masks and gloves, and visits were prohibited as of 30 March 2020. The right of a lawyer to visit his/her clients is exercised with full protective measures, which include a glass or other transparent barrier, as well as mandatory use of protective masks and gloves, and visit time is limited to 30 minutes.

Out-of-prison rights and benefits, as well as employment outside the correctional institution, were suspended in all visited institutions until further notice, and the management of the institutions informed persons deprived of their liberty that all suspended out-of-prison rights and benefits will be compensated for when the situation normalizes.

Packages are received only by mail, and canteen supply has been increased. In the Penal-Correctional Institution Sremska Mitrovica, packages received by mail must be set aside for 24 hours before being delivered to the recipient, due to the possibility of the virus remaining on the surface of the item.

The treatment is regularly performed in all correctional institutions on an individual level, i.e. there is no group treatment.

There are no visits or package deliveries, at the Reception Centre for Aliens, however ready to eat and cooked meals are provided for all persons. On the day of the visit, there were 5 people fasting for Ramadan who were allowed to bring meals to their dormitories and eat them when they want.

5. CPT PRINCIPLE

During the COVID-19 pandemic, the competent public authorities and all facilities where persons are deprived of their liberty in the territory of the Council of Europe should make concerted efforts to resort to alternatives to deprivation of liberty, in particular, in situations of overcrowding of places of deprivation of liberty, as close personal contact encourages the spread of the virus; authorities should make greater use of alternatives to pre-trial detention, commutation of sentences, early release and probation, reassess the need to continue involuntary placement of psychiatric patients, discharge or release to community care, wherever appropriate, residents of social care homes, and refrain, to the maximum extent possible, from detaining migrants.

NPM FINDING

According to the notification received by the NPM from the Administration for the Enforcement of Penal Sanctions in the official letter dated 14 April 2020, by applying the institute of probation, and early release, by abolishing remand, as well as by restrictive referral of new persons to prison, the number of persons deprived of liberty was reduced by 534 persons from 15 March to 13 April 2020.

In the District Prison Belgrade, placement has been reduced, and in certain cases remand was replaced by house arrest. 4 early release motions were approved. Decision on probation motions is issued without a hearing.

In the Penal-Correctional Institution Sremska Mitrovica, the penal sanctions enforcement judge issued a decision on early release of 16 persons. There were also parolees, but a smaller number.

In the Penal-Correctional Institution Belgrade – Padinska Skela, one early release motion was approved, and the other motion filed with the enforcement judge was denied. A petition for discharge from sentence was submitted for 7 convicts; however, it was still pending on the day of the visit.

The number of persons in the Reception Centre for Aliens has been reduced because the aliens whose residence has expired had been transferred to migrant reception centres.

6. CPT PRINCIPLE

During the COVID-19 pandemic, the competent public authorities and all facilities where persons are deprived of their liberty in the territory of the Council of Europe are required to pay special attention to the specific needs of detained persons with particular regard to vulnerable groups and/or at-risk groups, such as older persons and persons with pre-existing medical conditions, which includes, inter alia, screening for COVID-19 and pathways to intensive care as required, and psychological support.

NPM FINDING

There are no infected persons in any of the visited correctional institutions or in the Reception Centre for Aliens, and intensified health surveillance has been organized for persons belonging to particularly vulnerable groups. There are 3-4 people at increased risk due to age and pre-existing medical conditions in the Penal-Correctional Institution Belgrade, and these people are under increased health supervision. The Penal-Correctional Institution Sremska Mitrovica has 50-60 chronic patients who are isolated in a special part of the Institution and also under increased health supervision. One person had symptoms indicating potential presence of coronavirus, which is why the person was tested and the result was negative. Testing was performed at the correctional institution.

7. CPT PRINCIPLE

During the COVID-19 pandemic, the competent public authorities and all facilities where persons are deprived of their liberty in the territory of the Council of Europe must fully respect the fundamental rights of detained persons, which includes in particular the right to maintain adequate personal hygiene (including access to hot water and soap) and the right of daily access to the open air (of at least one hour); any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-over-Internet-Protocol communication).

NPM FINDING

According to the notification received by the NPM from the Administration for the Enforcement of Penal Sanctions by official letter dated 14 April 2020, the Director of the Administration issued an order to allow convicted persons to make maximum use of telephone booths, as well as detainees in consultation with adjudicating judges.

All measures to safeguard the health of their residents, contributing to the preservation of staff health, are complied with in all visited facilities. In all visited correctional institutions, access to hot water and means for maintaining hygiene were provided.

In the Penal-Correctional Institution Belgrade, outdoor exercise for convicted persons has been extended to four hours, and for persons placed under increased supervision it lasts two hours. Sports halls are open for use, however people do not use them as much as before the outbreak of their own volition. Telephone calls are enabled every day and two telephone booths are installed on the promenade. Mail and submissions are received and sent regularly.

In the District Prison Belgrade, outdoor exercise lasts for two hours. During the visit, we were informed that an agreement with the competent courts is underway to allow detainees telephone calls, and after the visit, we were notified that telephone booths had been set up in the Detention Department. All convicts are allowed one more telephone call. Mail and submissions are received and sent regularly.

In the Penal-Correctional Institution Belgrade – Padinska Skela, outdoor exercise lasts for two hours. Telephone calls are allowed every day and one telephone booth in the closed ward of the Institution, which houses 7 people, has been moved to the hallway in front of the dormitories. Mail and submissions are received and sent regularly.

In the Penal-Correctional Institution Sremska Mitrovica, convicted persons are allowed one more telephone call, while detainees cannot make telephone calls since there are no conditions for installing telephone booths in the part of the institution where they are held. There were 530 people in the open and semi-open part of the institution on the day of the visit, and these people were working. Mail and submissions are received and sent regularly.

Neither visited correctional institution provided the possibility of communication with family members via the Internet.

RECOMMENDATION

The Administration for the Enforcement of Penal Sanctions shall take the necessary action to ensure that all persons deprived of their liberty may maintain contact with family members and other close persons by telephone in all institutions for the enforcement of penal sanctions, in the event of a ban or restriction of visits due to a disease outbreak or other emergency. If the ban or restriction lasts longer, it is necessary to provide for other alternative means of communication, including communication over the Internet by using available programs for the transmission of images and sound.

In the Reception Centre for Aliens, access to hot water and personal hygiene was ensured. People may spend as much time as they want in the fresh air. The warden and police officers bought two mobile phones that are available to aliens, who are obliged to buy credit in order to use it. In addition, family and third parties can call them on the official fixed phone of the Reception Centre.

8. CPT PRINCIPLE

During the COVID-19 pandemic, the competent public authorities and all facilities where persons are deprived of their liberty in the territory of the Council of Europe should ensure that in cases of isolation a detained person, who is infected or is suspected of being infected by the COVID-19 virus, should be provided with meaningful contact every day.

NPM FINDING

There were no infected persons in the visited facilities on the day of the visit. Persons suspected of being infected were tested and the results were negative.

9. CPT PRINCIPLE

During the COVID-19 pandemic, the competent public authorities and all facilities where persons are deprived of their liberty in the territory of the Council of Europe must fully respect the fundamental safeguards against the ill-treatment of persons in the custody of law enforcement officials (access to a lawyer, access to a doctor, notification of custody) in all circumstances and at all times; precautionary measures (such as requiring persons with symptoms to wear protective masks) may be appropriate in some circumstances.

NPM FINDING

Fundamental safeguards against ill-treatment are applied in all visited correctional institutions and none of the measures adopted in connection with the outbreak refer to the exercise of these rights of persons deprived of their liberty.⁸

Addressing the Protector of Citizens as a mechanism of external control in addition to the existing complaint mechanisms within the Administration, as well as addressing the penal sanctions enforcement judge, function smoothly. The Protector of Citizens regularly receives complaints from persons deprived of their liberty, and in order to monitor their treatment, the NPM has introduced a special telephone line, which is available daily from 8 am to 10 pm.

10. CPT PRINCIPLE

During the COVID-19 pandemic, the competent public authorities and all facilities where persons are deprived of their liberty in the territory of the Council of Europe must enable monitoring by independent bodies, including National Preventive Mechanisms (NPMs) and the CPT over all places of detention including places where persons are kept in quarantine. All monitoring bodies should however take every precaution to observe the 'do no harm' principle, in particular when dealing with older persons and persons with pre-existing medical conditions.

NPM FINDING

The said principle is complied with in all visited facilities. As already mentioned,⁹ the visited facilities have achieved full cooperation with the NPM Team and enabled it to act without hindrance in accordance with its mandate. In addition, the NPM received in writing all the information requested from the Administration for the Enforcement of Penal Sanctions on the measures taken.

⁸ See more about how lawyer's visits to correctional institutions are organized within the NPM findings on compliance with 4th CPT Principle.

⁹ See Chapter 2.3. Cooperation between officials and the NPM Team.

The NPM methodology was adjusted to the circumstances of the infectious disease outbreak and the "do no harm" principle. The NPM Team conducted their visits in such a way so as to prevent exposure of persons deprived of their liberty and the staff to the risk of infection and complied with all measures against the spread of disease in the visited facility.¹⁰

¹⁰ See Chapter 2.2. Course of the Visits.