



OBSERVATIONS ON APPLICATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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INTRODUCTION

Institution of Human Rights Ombudsman of Bosnia and Herzegovina (hereinafter: the Institution), in accordance with the decision of International Coordinative Committee (the ICC), the Institution, as national human rights mechanism in BiH, is provided with possibility to retain its „A“ status, if it provides documentation necessary for this¹. The mandate of the Institution is to follow up and ensure protection of citizens' rights in Bosnia and Herzegovina (BiH), also including protection against all forms of torture. With purpose of ensuring of effective execution of this part of their mandate, BiH Ombudsmen, according to the Rules on Internal Organization and Systematization, decided, through new internal organization adopted in 2009 to create, *inter alia*, two new departments:

- Department for protection rights of prisoners/detainees, and
- Department for protection of rights of persons with disabilities.

Based on complaints filed with mentioned departments and through monitoring and analyses of the situation in the field as well, particularly through visits to detainee units, prisons and mental health institutions, BiH Ombudsmen decided to provide UN Committee against Torture with their Observations on application of the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments (hereinafter: the Observations).

A. GENERAL COMMENTS

In preparation of the Observations, the Ombudsmen paid particular attention at legislative and institutional framework and procedures ensuring application of international standards from the area of prevention of torture in BiH.

According to relevant indicators, it could be concluded that, in comparison with initial submission by Bosnia and Herzegovina², **an insignificant improvement in the area of prevention of torture has been recorded**, which is, in a very small measure, reflected to implementation of Conclusions and Recommendations issued by Committee against Torture (hereinafter: Cat Recommendations).

³ **Implementation of the Recommendations is mainly of partial character**, while **strategic and systemic approach to regulation of the right to protection against torture** completely lacks. Such an approach is particularly problematic, given that BiH is post-conflict country in transition, the country with great number of victims of torture, status of whose is still not defined.

For all aforementioned, the authorities still find excuse complex structure of the authorities established in BiH by Dayton Peace Accord of 1995. This complexity is particularly mirrored in segment of human rights protection, where the State is of primary competence, and the entities

¹ Following Human Rights Ombudmen's request submitted, in accordance with strict reaccreditation procedure process, in July 2009 to the ICC SCA for retaining of „A“ status, the SCA on 17.11.2009 reviewed submitted request and recommended re-accreditation with „B“ status, giving the Institution the opportunity, in writing, within one year to provide documentation deemed necessary for establishment of continued conformity with the Paris Principle, the period during which the Institution retains its „A“ status.

² (CAT/C/21/Add.6)

³ The Committee reviewed initial report by BiH (CAT/C/21/Add.6) at 667. and 670.session (CAT/C/SR.667 and 680) held on 08. and 09.11.2005, while Conclusions and Recommendations were adopted at 689 session held on 15.12.2005.

are to ensure respect for human rights. In the other hand, the issues that could result in torture (such as: execution of criminal sanctions, institutions for accommodation of various categories of persons, social protection including the rights of civil victims of the war) are primarily within competences of the entities, and the State has only coordinative function. Mentioned facts frequently result in lack of coherency and fair policies, legislation, and by this very fact, lack of legislation and implementation by-laws, which in the end results in human rights violations.

Legislation **still does not contain definition of torture and criminal legislation of and entity level is not harmonized**⁴, and the Law on Movement and Stay of Aliens and Asylum neither the Law on Missing Persons are still not amended. In certain segment of legislation there appeared changes that resulted in worsening of position of the victims of torture, particularly victims of war torture, and it is visible that, in this sense, none of the CAT Committee Recommendations are complied with.

Additionally, significant improvement is not registered in the area of institutional capacities, too. In the area of establishment of procedures for exercise of rights, there is not visible improvement as well. Moreover, procedures for determination of degree of disability are made more complex, slower and less effective.

In BiH **application of international standards completely lacks**, particularly in the cases where domestic legislation is not harmonized with international standards. Although it is one of CAT Committee Recommendations, the State has not ensured that judges, prosecutors, lawyers and other staff become fully aware of international commitments provided for by the Convention and that fair treatment should prevail in all court procedures, and that independency of judiciary should be fully guaranteed and protected, particularly in the proceedings related to protection of minorities and returnees.

Slaw of judicial system especially in the cases related to recognition of status of civil victims of war is particularly concerning and limits the victims in exercise of their rights. According to information gained by associations of victims, in courts there are several thousands of claims for realization of status of victim of war that are still not taken in procedure, which arise the question of existence of effective court protection for this category of citizens.

It is particularly concerning that there is a significant number of Decisions taken by the Constitutional Court of BiH that are not implemented even several years following their adoption, and these decisions are related to determination of human rights violations. A number of non-implemented decisions by Constitutional Court are related to rights of families of missing persons.

B. POSITIVE IMPROVEMENTS

In time period between two reports there are registered positive improvements in BiH and by all means it should be stressed that **the Convention on the Rights of Persons with Disabilities has been ratified**⁵, and that **the Law on Prevention of Discrimination has been adopted**, which also guaranties protection of the rights of victims of such type of torture . There are also significant improvements in the area of detecting of missing persons, so, **finally, two entity institutions for missing persons are unified with the Institute for Missing Persons**, Board of Directors and Supervisory Board are established and all by-laws guarantying functionality of the Institute are adopted. Additionally, **the Rules on Verification of Missing Persons** as a base for establishment of

⁴ CAT/C/BiH/CO1, item 9

⁵ Un Convention on the Rights of Persons with Disabilities and its Optional Protocols have been ratified on 07.12.2009 by the House of Representatives and on 15.12.2009 by the House of Peoples of Parliamentary Assembly of BiH.

central evidence of missing persons in BiH, process of verification and registration of missing persons in BiH in central evidence has already begun. Significant improvement in this area is Decision taken by Main BiH Prosecutor of 01.01.2011 to undertake all exhumations and identifications as investigative actions in finding of missing persons, which removes problem related to jurisdiction of prosecutor office's and which sometimes resulted in delay of exhumations.

It is important to draw attention at amendments on the Law on Criminal Procedure („Official Gazette of BiH“, no: 93/09) wherein there is not possibility for conclusion with defendant without provision of information about it to victims, that is, court shall examine whether victims are provided with opportunity to claim legal and property request ⁶.

Following four years of delay⁷, three ombudsman institutions in BiH (one at the state level and two at entity level) have been finally unified in a single one at the State level – Institution of Human Rights Ombudsman of Bosnia and Herzegovina, by which opinion of the Venice Commission, no: 274/2004, CDL 028(2004)⁸, has been partly complied with.

C. MAIN CONCERNS

Considering the issue of torture, inhuman and degrading treatment and punishment, BiH Ombudsmen take in account **complexity of legislative framework**. Main characteristic of legislation is exposure **to frequent amending, and changes and modifications are frequently adopted without publishing of consolidated wording**. At the same time necessary by-laws, enabling application of such legislation,⁹ are neither adopted nor applied. All together it creates confusion and aggravates exercise of the rights, and following up of application of legal provisions.

C.1. Legislation

- Since in 2006 the Council of Europe adopted new European Prison Rules, it imposes BiH to harmonize the Law on Execution of Criminal Sanctions, Detention and other Measures with new standards. In May of 2009 **Amendments to the Law on Execution of Criminal Sanctions, Detention and other Measures** was adopted with intention to ensure better coordination of

⁶ Article 231, paragraph (6): *When considers agreement on confession of guiltiness, court shall examine: whether a damaged party is provided with opportunity before a prosecutor to claim legal and property request, as well as paragraph 9: Court shall inform damaged party on the results of negotiation on confession of guiltiness.*

⁷ Amendments at the Law on Human Rights Ombudsman of Bosnia and Herzegovina „Official Gazette of BiH“, no: 32/06

⁸ The Venice Commission had its session on 20.04.2004.

⁹ Criminal Code of Bosnia and Herzegovina, „Official Gazette of BiH“, no: 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10. Criminal Code of FBiH „Official Gazette of FBiH“, no: 36/03, 37/03, 21/04, Criminal Code of Republike Srpska „Official Gazette of Republike Srpska“, no: 49/03, 108/04, 37/06, 70/06, 73/10. Criminal Code of Brčko District, „Official Gazette of Brčko District“, no: 10/03, 45/04, 06/05.

The Law on Criminal Procedure, „Official Gazette of BiH“, no: 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, The Law on Criminal Procedure of FBiH, „Official Gazette of FBiH“, no: 32/07, 53/07, 76/07, 15/08, 12/09, 16/09, 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 64/07. c The Law on Criminal Procedure of RS, „Official Gazette of RS“, no: 50/03, 111/04, 115/04, 29/07. The Law on Criminal Procedure District Brcko, „Official Gazette of District Brcko“, no: 10/03, 48/04, 06/05, 12/07, 14/07, 21/07.

BiH Law on Execution of Criminal Sanctions, Detention and other Measures, „Official Gazette of BiH“, no: 13/05, 53/07, 97/07, 37/09, FBiH Law on Execution of Criminal Sanctions, Detention and other Measures, „Official Gazette of FBiH“, no: 44/98, 47/99 i 12/09, Law on Execution of Criminal and Petty Offence Sanctions of Republika Srpska, „Official Gazette of RS“, no: 64/01, 24/04, 68/07, Law on Execution of Criminal and Petty Offence Sanctions of District Brcko, „Official Gazette of District Brcko“, no: 08/00, 01/01, 19/07, 36/07.

The Law on Basic Social Protection, Protection of Civil Victims of War and Protection of Families with Children of FBiH „Official Gazette of FBiH“, no: 36/99, 54/04, 39/06 u 14/2009). The Law on Social Protection of RS, „Official Gazette of RS“, no: 5/93, 15/96, 110/03 and 33/08. The Law on Protection of Civil Victims of War of RS „Official Gazette of RS“, no: 25/93, 1/94, 32/04, 37/07 and 60/07“.

inspections of State level with entity inspections, establishment of independent commission to improve professional work of managements and prisons' staff and inspections. Unfortunately, undertaking of individual interventions in legislation covering execution of criminal sanctions did not result in establishment of independent inspection mechanism for supervision of the work of institutions for execution of criminal sanctions and permanent coordination between inspections at BiH and entity levels.

- As to position of a victim, in BiH it is adopted ***the Law on Witness Protection Programme***¹⁰ and ***the Law on Endangered Witness or Witness under Threat Protection Programme***¹¹ was amended as well. Although the legal framework, which should ensure protection of victims during court proceedings, unfortunately, problems in implementation of mentioned pieces of legislation made the Law on Witness Protection Programme to be just a „dead letter“. Mechanisms established by the Law on Witness Protection Programme were never applied in practice because such mechanisms are very expensive and include relocation and change of victim's identity. The State is not in a possibility to finance such modal and unfortunately there are not measures for development of possible implementation of law through bilateral cooperation between the states.

The Law on Witness Protection is mainly applied in proceedings before BiH Court, while at lower level of the authorities, due to unequipped of judicial system, and undeveloped infrastructure, there is not possibility for application of this Law. This is of particular importance for processing of war crimes, due to what it is necessary for such cases to be processed exclusively before BiH Court.

- ***Reform of criminal legislation of 2003*** resulted in limited rights of the victims and, consequently, concentration of whole power in the hands of prosecutor offices, and a victim became just a tool of a criminal charge and source of information. This means that a victim has right and obligation only to witness as any other witness and can claim legal and property request. Such legal position of a victim leads to its marginalization, which is particularly important given that a victim is not ensured enjoyment of economic and social rights. BiH Ombudsmen conclude that in BiH legislation and in practice as well ***there is insufficient protection of the rights and interests of a victim.***
- BiH Ombudsmen stress ***that at State level there is not Law on Civil Victims of War***, which would define status and rights of this category of citizens, and that there also ***lacks basic principles that should regulate this issue.*** It is visible that not much was done to avoid multiplication of concepts and approaches to this issue, which also goes for prevention of different treatments. Thus, even today, fifteen years after the war, ***civil victims of war are faced with problem of inadequate definition of their status and rights prescribed by legislation.***¹²

¹⁰ The Law on Witness Protection Programme in BiH, "Official Gazette of BiH, no: 29/04

¹¹ the Law on Endangered Witness or Witness under Threat Protection Programme, "Official Gazette of BiH, no: 3/03, 21/03, 61/04, 55/05.

¹² In FBiH this issue is regulated by ***the Law on Basic Social Protection, protection of victims of war and protection of families with children.*** However, it is visible that this Law at the same time regulates several issues from the area of social protection: basic social protection, protection of families with children and civil victims of war. Following adoption of this Law (06.09.1999) it has been repeatedly amended, and consolidated wording never appeared, which significantly aggravates application of this Law in practice. Additionally, up to date sufficient number of clear by-laws have not been adopted. Therefore, it is to be concluded that such normative concept significantly aggravates exercise of protection of civil victims of war.

In the other hands, the issue of civil victims of war in RS is regulated by ***the Law on Protection of Civil victims of War.*** Here one should have in mind that basic wording of the Law was adopted in 1993, during the war, and that since then four changes were

Partial activities undertaken by competent organs of BiH are visible and targeted to regulation of issues of victims of war, however, such activities, in the end, are not of significant impact to complete improvement of position of this category. As most of legislative interventions were result of pressure of certain groups of citizens, and frequently such interventions were not mutually coordinated, additional complicity appeared in this area. Legislation still does not recognize status of former inmates of concentration camps and through changes and modifications of the Law on Social Protection in FBiH status of civil victims of war is even worsened, especially concerning victims of sexual harassment.

- It could be concluded that **BiH legislation has still not ensured reparation for victims of war**, since, up to date, the Law on Victims of Torture has not been adopted. In BiH, as post-conflict and country in transition, clear definition of victims of war is not established and different terms are used for different categories of persons, such as: missing persons and members of their families, inmates of concentration camps and other imprisoned persons, raped women, victims of torture, etc.

C.2. National preventive mechanism under OPCAT

Through cooperation between BiH Ombudsman Institution and OSCE Mission to BiH in preparation of national preventive mechanism (NPM) for BiH, within framework of Optional Protocol of the Convention against Torture (OPCAT)¹³, it is concluded ***that competent BiH authorities have still not undertaken measures effective enough for establishment of this mechanism***, by which they would fulfill obligation envisaged for OPCAT state-members. Although the practice applied in a number of countries has shown that the best modal for establishment of NPM is an ombudsmen institution together with non-governmental sector and organizations of civil society, ***in BiH there is still in place establishment of various bodies with different competencies targeted to assessment of the situation in the institutions for execution of criminal sanctions, without any mechanism to coordinate this process, and none of these bodies fulfill criteria determined by OPCAT, enabling them to become national preventive mechanism***. BiH Ombudsmen express their concern regarding non-existence of clear policy related to establishment of NPM, and it not only raise question of non-fulfillment of international obligations but also creates uncertainty in process of monitoring of human rights situation in the institutions for execution of criminal sanctions and increases irrational spending of financial resources.

C.3. The Institutions

Level of quality of application of existing legislation and associated by-laws is the main obstacle for ***institutes and institutions of quality specialized for work with and accommodation of the victims***. This is most frequently excused by lack of finances. It is necessary to draw attention at lack of any strategic approach in long-term resolving of the problems of this category of citizens, particularly having in mind that social rights are of progressive character, realization of which is not expected immediately, yet preparation of strategic long-term approach is necessary. This particularly

done. In the meantime, no by-laws were adopted, although the Law prescribe adoption of by-laws, so it is no wonder that first instance organs do not know how to deal with claims of civil victims of war, which leads to conclusion that RS civil victims of war can not have easy access to protection of their rights.

¹³OPCAT – as a international treaty, contains strict provisions and, accordingly, establishes standards of independent monitoring. This is the best elaborated and developed international treaty dealing with these issues. Apart from international body for visits, Subcommittee for Prevention of Torture (SPT), OPCAT requests that each member-country should establish national (domestic) preventive mechanism.

applies to institutions for accommodation of persons with disabilities¹⁴, institutions for accommodation of children with socially deviant behaviors, institutions for execution of criminal sanctions, etc. The Ombudsmen reached this finding through visits to all institutions for accommodation of persons with disabilities and institutions for execution of criminal sanctions.

C.3.1. Institutions for execution of criminal sanctions and institutions for accommodation of mentally disabled persons

Lack of institutions for accommodation for persons who committed criminal offence in the state of mental incapacity is particularly concerning. Although certain consultations have been done between entity ministries of justice and BiH Ministry of Justice, it has not resulted in any changes in practice. On the date of ombuds-visit to correctional institution in Tuzla, 5 October 2010, in status of prisoner there happened to be a person with court ordered measure for accommodation in institution for persons who committed criminal offence in state of mental incapacity. For this and many other persons happened to be in the same status there is not possibility to be relocated from prison, and the only institution designed for this purpose, in Sokolac, is not in possibility to accept them. Accordingly, human rights of this category of persons are violated consciously in order of ensuring security of broader society.

At the same time, during the visits to the prisons, the Ombudsmen determined that there are cases, where due to change of mental situation of prisoner, further serving of the sentence becomes senseless, and it is not defined by law who initiates procedure for accommodation of such person to institution for accommodation of persons with mental disorders. Most frequently such persons remain in prisons until the end of the sentence and then they are released without ensuring of any further social care.

In 2009, during visits to the institutions for accommodation of mentally disabled persons, the Ombudsmen noticed basic characteristic – overcrowdings, which is directly reflected to quality of accommodation, in one hand, and, in the other, lack of adequate care by competent organs for the situation of this category of persons.

In relation, the Ombudsmen note that functioning and years-long existence of these institutions is result of usage of their own capacities, staff and its professional commitments, and that there is not support by the authorities to these institutions. During the visits, relations between persons accommodated and the staff has shown ***that the staff is fully devoted to accommodated persons and their best interest.***

At the same time, BiH Ombudsmen ***note high level of improvisation due to lack of systemic approach to accommodation of this category of citizens,*** including lack of support by competent governmental organs.

As there is not ***clear universal definition for mentally disabled*** persons, it results in impossibility of categorization of such persons as to whether individual person should be accommodated in an institution of social or health protection. At the same time, ***in each institute there is waiting list of mentally disabled persons to be accommodated in the institute.***

The Ombudsmen notice that accommodation rooms, regardless of whether it is a smaller or larger room, there are too many beds and the beds are frequently double-deckers, so it is obvious that 4m2 per person standard is complied with, which is requirement for institutions where convicts serve their prison sentence. Therefore, the Ombudsmen conclude ***mentally disabled persons are accommodated under worse conditions than prisoners convicted for committing of criminal***

¹⁴ Special Report by BiH Human Rights Ombudsmen on the situation in the institutions for accommodation of mentally disabled persons in BiH, published on 10.09.2009.

offences. The Ombudsmen express concerns that described conditions of accommodation violate the right to privacy of accommodated persons and create possibilities for eventual human rights violations.

This fact opens space for arbitrariness and lack of ensuring of principle of equal treatment of all mentally disabled persons without discrimination. This is firmly confirmed by the issue of accommodation in the institutions, since it is unclear according to which criteria reception lists are prepared, given that waiting lists for accommodation of mentally disabled persons are very extensive.

As the Institution of Human Rights Ombudsman of BiH, in its new work organization, established **Department for protection of prisoners/detainees**, the Department gained legal possibility to review complaints filed by prisoners and detainees, which was decisive factor for Ombudsmen to visit institutions for execution of criminal sanctions. During the visits, BiH Ombudsmen interviewed prison managements, prisoners (without presence of prison staff) and in certain cases the Ombudsmen interviewed detainees as well¹⁵ and did monitoring of prisons' rooms, rooms where the prisoners stay or work, with special focus on harmonization of prisons' conditions with European Prison Rules¹⁶. Based on all aforementioned, BiH Ombudsmen prepared *Special Report on the situation of human rights in the institutions for execution of criminal sanctions in BiH*, which was published on 14.09.2009.

BiH Ombudsmen, during the visits to institutions for execution of criminal sanctions (through interviews with managements), as well as through consultative meetings with representatives of competent ministries reached the findings that **legislation regulating execution of criminal sanctions is not adequate and harmonized with international standards, before all with European Prison Rules**. The Ombudsmen noticed lack of systemic approach to this category of persons.

Certain improvement is visible in implementation of recommendation by Committee against Torture¹⁷, so that the Ombudsmen notice that long-years existing problem related to execution of criminal sanctions for minors is finally resolved through establishment of Department for juvenile offenders within correctional institution Kula and within correctional institution Tuzla.

The Ombudsmen further notice problem of overcrowdings of the prisons, due to which, according to the latest data, about 850 persons wait for serving of their sentences, and, at the same time, Ombudsmen find source of the problem in poor coordination and cooperation between competent ministries and judicial institutions and managements of the institutions for execution of criminal sanctions.

During the visits BiH Ombudsmen noticed lack of systemic approach to regulation of the area of execution of criminal sanctions, which results in the fact that in a single institution different categories of persons are accommodated, including males and females and the minors, too. This means that one of the conclusions or recommendations by the Committee¹⁸ is not complied with.

During their visits ombuds-staff determined that abuses appear in various forms and some of them appear as a result of organizational omissions. The Ombudsmen are concerned by overall quality of life in correctional institutions, which particularly applies to restricted activities offered to prisoners and which is directly reflected in occurrence of abuses in these institutions, which impacts on general relations between the prisoners and prison staff.

¹⁵ For such interviews the Ombudsmen had to obtain consent of competent court

¹⁶ Adopted according to Recommendation no: (2006)2 of Committee of Ministers of member countries and related to prison rules, adopted at the session of 11.01.2006.

¹⁷ Recommendation CAT/C/BiH/CO1

¹⁸ Recommendation CAT/C/BiH/CO1

In certain prisons there is a relatively low level of security, which increases danger of serious endangerment of the prisoners, and it comes from insufficient number of guards and, in some prisons, number of scattered objects.¹⁹

Serious problem is in the fact that ***persons who committed the most serious crimes serve the sentences at the same place*** such as: serious robberies, drugs dealing, trafficking in human beings, war crimes, cruel murders, kidnaps, blackmails or organized crimes ***serve the sentences at the same place and together with persons who committed much less serious criminal offences***.

Most of prisoners interviewed during ombuds-visits did not have significant objections regarding behavior of prison staff. They mainly see this relation as a correct enough. Small number of prisoners complained about disciplinary abuses, such as leg or hand punches, loud closing of the doors at the rest time, verbal threats and humiliations, frequent narcotic tests that are beyond necessary measures for health examination, too frequent lineups – in some prisons ten times a day, and therefore the Ombudsmen in their Special Report of 2009 recommended that these occurrences should be examined by prison managements and competent ministry.

The Ombudsmen also noticed that in institutions for execution of criminal sanctions, in rooms where are placed detainees and convicts, satisfactory level of hygienic conditions is not ensured, there is not enough air, light, heating and ventilation. With regard to food, it is concluded that quality of food varies from institution to institution. In a number of prisons, the prisoners are provided with opportunity to work. The only difference between institutions is that they are of different capacities. In most of the prisons there are rooms for practicing of religion.

Since BiH Ombudsmen encountered the problem of accommodation of mentally disabled persons in specialized institutions, through visits to such institutions from June to August of 2009, the Ombudsmen prepared ***Special Report on the situation of human rights in institutions for accommodation of mentally disabled persons***²⁰.

BiH Ombudsmen further notice that lacks organization of systematic education and information provided to the police and prison staff on human rights, including other important knowledge and skills necessary for their work. The only education attended by prisons' staff is occasional seminars organized by the Council of Europe and other international organizations.

C.3.2. Immigration Center

BiH Ombudsmen recognize significance of principles of international law, provided for by Article 3 of the Convention - „*non-refoulement*“ – according to which the State violates absolute prohibition of torture not only in case where the Government does direct torture but also if it sends a person to the country where there exist justifiable suspicions that the person shall be probably exposed to torture. Additionally, one should have in mind that this procedure is not equalized with procedure of obtaining asylum.

In connection, the Ombudsmen support establishment of Immigration Center of Bosnia and Herzegovina, which is under jurisdiction of the Ministry of Security of Bosnia and Herzegovina and which has been established in July of 2007, and which has been up to date visited for several times by BiH Ombudsmen. In the Center, on the date of ombuds-visit, 22.04.2010, there were 29 persons of 15 different citizenships. BiH Ombudsmen are of the opinion that establishment of

¹⁹ KPZ Zenica i KPZ Foča

²⁰ Special Report was published on 10.09.2009.

Immigration Center fully meets human rights protection standards, however, they ***express concerns regarding rights of persons accommodated in this Center for more than one year and see it as consequence of non-effective judicial system***, where through abolishment of decisions and referring of the cases to reconsideration means buying of time in order to, in concrete cases, decision would be taken by European Human Rights Court in Strasbourg, which earlier adopted temporary measures on prohibition of extradition until final court decision.

D. RECOMMENDATIONS

Having in mind expressed concerns related to application of the Convention against Torture, Human rights Ombudsmen of Bosnia and Herzegovina issue the following recommendations:

D.1. General recommendations

1. Definition of torture should be incorporated in criminal legislation of BiH, as recommended in the Conclusions and Recommendations of the Committee against Torture, adopted at 689th Session of 15.12.2005;²¹
2. Reform of criminal legislation should be done in the way to increase the rights of a victim;
3. There should be adopted legislation regulating the rights of the victims of war according to principles equal treatment of all victims and principle of non-discrimination;
4. Process of looking for missing persons should be accelerated through additional engagement of doctors of forensic medicine and with additional international assistance, as well as verification of missing persons through engagement of additional human resources to make an end to manipulations related to number of missing persons;
5. Application of the Decisions of the Constitutional Court should be ensured and procedures for determination of responsibilities for non-application of said Decisions should be initiated;
6. BiH should finally establish NPM OPCAT, bearing in mind all positive experiences related to the process and reconsideration of of justifiability of existence of up to date established mechanisms for following up of the situation in the institutions for execution of criminal sanctions;

D.2. Improvement of the situation in the institutions for execution of criminal sanctions

7. Competent bodies in BiH should undertake measures for implementation of Recommendations issued by Human Rights Ombudsman of BiH, issued based on findings contained in Special Report on the situation in the institutions for execution of criminal sanctions;
8. The Ministry of Justice of BiH and entity ministries of justice should establish coordinative mechanism with purpose of following up and realization of execution of criminal sanctions in BiH, particularly through establishment of data base related to capacities of the institutions for execution of criminal sanctions and final court decisions on prison sentences with a view to eliminate prisons overcrowdings;
9. With a view to ensure respect for penology principle, it is necessary to conduct classification of the institutions for execution of criminal sanctions in accordance with European Prison Rules, which would make an end to imprisonment of the most serious

²¹ CAT/C/BIH/CO/1, item 9.

- offenders and less serious offenders in the same prison, and to take due care in relocation of prisoners from institution of closed type to institution of half-opened type;
10. Basic principles should be prepared, respecting international standards regulating area of execution of criminal sanctions in the sense of categorization of institutions with possibility of establishment of triage center which, based on medical, social pedagogic and other indicators, would decide on accommodation of any mentally disabled person;
 11. Systemic training of the staff employed in the institutions for execution of criminal sanctions should be ensured;

D.3. Improvement of the situation in the institutions for accommodation of persons with mental disabilities.

12. Competent BiH bodies should ensure implementation of the recommendation of Human Rights Ombudsmen of BiH contained in Special Report on the Situation in the Institutions for Accommodation of Mentally Disabled Persons;
13. All necessary measures and activities should be taken for establishment of legal framework which would in a comprehensive way define the rights of mentally disabled persons, since BiH Ombudsmen noticed lack of qualitative protection and necessity for greater involvement of the society, and supervision and monitoring by competent organs;
14. With a view to improvement of institutional accommodation of mentally disabled persons, together with request for assistance of international community, particularly EU and UN, possibilities of increasing of capacities or request for re-designing of objects designed for military purposes should be considered;
15. Systematization of working posts should be harmonized with the needs of the institutions of such type, including engagement of a number of professionals of various profiles necessary for work with persons from this category;
16. Systemic and continual programs of professional development of institutions' staff and prevention of burn out syndrome of institutions' staff should be ensured;
17. There should be regulated the issue of functioning of the institutions for accommodation of mentally disabled persons, for which is competent the Ministry of Labor and Social Policy of FBiH, with obligation for organization of consultative meetings with cantonal ministries of social protection and representatives of social work centers.

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