IV Observations and Concerns by BiH Ombudsmen

4.1. Positive observations

- In the institutions for execution of criminal sanctions in BiH certain improvements are noticed regarding construction of new and adaptation of existing accommodation capacities, however, without any systemic approach to this. Accordingly, the Government of the Federation of BiH, through the Ministry of Justice of FBiH, assigned KM 2,8 millions for new building of correctional center in Tuzla, Kozlovac Farm, where all convicted persons, previously accommodated in building placed in the city, are dislocated, which means implementation of full standards determined by Similar situation exists in Department of European Prison Rules. correctional center Tuzla, placed in Orašje, where it is still neeeded equping of already constructed facility. At the same time, lack of sufficient attention paid to correctional institution in Zenica, which is the only institution of closed type and where the largest number of prisoners are accommodated and correctional institution in Sarajevo, where there are the poorest conditions of accommodation in FBiH, which results in frequent riots, escapes and other actions that endanger security situation in FBiH.
- In Republika Srpska there is also present significant increase of resources for improvement of the conditions in the institutions for execution of criminal sanctions for adaptation, renewal and reconstruction of existing facilities, together with planning of construction of new ones. It is particularly important to stress plan of dislocation of Bijeljina County Jail to a new location (military barracks Patkovača Golo brdo), while, at the

same time, the adaptation of Doboj County Jail arises certain concerns, since the adaptation primarily includes increase of capacitates, which will further endanger the rights of the convicts, having in mind that the facility is placed in the city center and that its range is limited and which does not allow organization of work activities and walks of prisoners. Execution of sanction in this prison can not be viewed solely according to number of beds, but it must be viewed entirely, including ensuring of prisoners' right to walk in open air/walks, work, hygiene maintenance, quality of visit conditions, free visits and at the same time to maintenance to ensure security, prevent drug supplies or other prohibited things, which is very difficult to ensure if the institution for execution of criminal sanctions is placed in the city center. Undoubtedly, prison building in Doboj requires urgent adaptation, since, at the moment, this institution for execution of criminal sanctions is of the poorest conditions in RS, yet the decision on increase of capacities of this institution should be reconsidered.

- Long-years existing problem related to execution of criminal sanctions for minors is finally resolved in RS through establishment of Department for juvenile offenders within correctional institution Kula. Its capacity is now enough for execution of such sanctions in RS. Department is staffed by adequate cadres and accommodation conditions are in conformity with prescribed standards.
- Improvement of conditions of accommodation of persons accommodated in forensic department of prison Zenica has been recorded. In May of 2009 adaptation of forensic pavilion was completed, which ensures accommodation of small groups and keeping of dignity of beneficiaries and which is a key policy for psychological and social rehabilitation.

4.2. General concerns

4.2.1. Capacities and accommodation

- Most of correctional institutions are placed in old and worn out buildings. Consequently, correctional institutions: Foča, Mostar, Sarajevo, Zenica and Tuzla are placed in the constructions built in the time of Austro-Hungarian Monarchy. Several correctional institutions are placed in the constructions built and served for completely different purposes. Bijeljina County Jail is placed in a facility for storage of materials and business premises of economy enterprises. The Ombudsmen are particularly concerned concerning placement of jail in Sarajevo, Doboj, Mostar and Tuzla because of the fact that these institutions are situated in city centers, which not only deprive the prisoners of work activities but also break prescribed standards for walk in the open air and work, which could lead to inhuman and degrading conditions of accommodation. This specially applies to correctional institution in Sarajevo where the conditions are below any minimum. Additionally, the fact that two-thirds of RS prisons, correctional institution Foča as well, are still in the same buildings where they were before the war and these buildings are in pretty poor shape, so the adaptation was needed, which primarily applies to convicts' standard (improvement of conditions of accommodation for the persons deprived of liberty) and continual maintenance of the facility.
- Non-systemic approach to policy of execution of criminal sanctions is highly present, which results in the fact that in a single institution there are different categories of persons including sentenced persons and detainees, male and female, detained and convicted minors, etc. This is in direct contradiction with European Prison Rules and reflects itself in quality of serving the sentences and also impacts on convicts' and detainees' human rights, since a small number of prison staff must respond to the needs of different categories of persons.
- In FBiH there is not separate institution for execution of criminal sanctions for minors except separate pavilion within prison in Zenica, in which, due to

overcrowded other capacities, adult convicted persons are accommodated, too. Such situation undermines basic penology principle: separation of minors from adult convicts.

- During the visits it was noticed that statement by competent courts that there are not enough places in prisons and that because of this 1200 persons in FBiH wait for execution of sanctions is simply not correct. Managements of several correctional institutions claim that there are places for new convicts. Nevertheless, problem of overcrowded prisons present more as a consequence of poor coordination and cooperation between competent ministries and judicial institutions and prison managements, which particularly applies to FBiH.
- The Ombudsmen are of the opinion that overcrowded prisons, accommodation in small facilities without satisfactory hygienic conditions, constant lack of privacy, decrease of outdoor activities are caused by great lack of prisons' staff and inadequacy of buildings, overworked medical services, increased tensions leading to more violence between convicts and between convicts and prison staff. However, it is symptomatic that representatives of BiH Ombudsmen Institution during their visits to institutions for execution of criminal sanctions on several occasions heard convicts dislocated from Zenica prison in some other institution of half-open type (Mostar, Bihać) wish to be back in Zenica, and according to the statistics at the moment this is the most overcrowded prison in BiH. This fact points a finger to the fact that capacities of institution and number of prisoners are not the only parameter for evaluation of the situation from the sphere of execution of criminal sanctions and, therefore, overcrowded capacities can not used as an excuse for poor situation in this area.
- The Ombudsmen are not convinced that ensuring of additional accommodation places itself offers lasting solution in the area of execution of criminal sanctions. Namely, a number of European states initiated extensive programs for prison constructions, following which these countries concluded that the population of prisoners increased proportionally with increased capacities. On contrary, existence of policy

limiting or determining number of imprisoned persons constitutes a strong contribution in certain states where prisoner population is kept at the level that can be managed.

4.2.2. Legislation

• Legislation establishing execution of criminal sanctions in BiH is inadequate and not harmonized with international standards, particularly with European Prison Rules. During their visit representatives of the institutions for execution of criminal sanctions drew attention at this fact and representatives of competent ministries did the same. This creates space for arbitrariness and omission of ensuring of principle of equal treatment of all convicted or detained persons, which is obvious and present in practice.

4.3. Security

• Security in correctional institutions and application of security measures are mainly applied in classical manner as it was years ago, i.e. by guards, walls, etc. Only few institutions are equipped with modern technical security equipment such as video surveillance, lasers, special locks, etc. No institution is equipped with modern technical or other equipment for drug detection except for Zenica prison which has special dogs for drugs detection. In almost all institutions the cases of drugs supplies to prisoners, hidden in certain things or food, have been detected and it has been done by routine visual search or search of prisoners coming back from their annual temporary releases.

4.4. Health protection

• In certain institutions ombuds-staff noticed improvement in ensuring of health protection. In most institutions new convicts are medically examined by a doctor or medical technicians and the results are recorded in medical file.

These files are consisted of selected papers and information contained therein is poor and incomplete in certain institutions.

- Out of all institutions for execution of criminal sanctions in BiH permanently employed doctors exist only in prisons in Zenica, Sarajevo, Banjaluka, Kula and OZ Bijeljina, while in other institutions the doctors work according to temporary contracts on work so they come to prisons only in certain days weekly and then examine the convicts. The same system is applied regarding health protection by the specialists. BiH Ombudsmen are concerned by the fact that there are not permanently employed doctors in all institutions due to specific situations and number of prisoners and the fact that numerous doctors are registered as unemployed, while the institutions pay doctors according to temporary contracts on work, so it is unclear how the doctors active in correctional institutions bring this activity in conformity with their permanent employment. We are of the opinion that doctors and medical staff active in prisons should be of specialists' level which would enable them to deal with specific forms of prison pathology and should also adjust medical treatment methods to the conditions imposed by prison environment. With regard to prisons' health protection issue, we assess that much more coordination should take place between ministries of health and ministries of justice.
 - Each institution has ambulance where primary examinations and first aid is provided, and some of the institutions have their stationery. In some institution, despite of existence of adequate rooms for medical purpose, these rooms are not in function. For all complex examinations or treatments the prisoners are sent to local health institutions. The Ombudsmen are seriously concerned by stationary in correctional institution in Tuzla, which is in a very poor condition and should be urgently closed.
 - Most of the persons met by ombuds-staff complained about anxiety, insomnia, headache, and there is a lot of prisoners suffering from hepatitis C and cardiovascular problems. During the visits some prisoners complained that they were deprived of doctor's care and that only the other prisoners took care about them.¹

¹ KPZ Kula and KPZ Zenica

- Dentist interventions are provided in prison facility, and where there is not such facility in a prison then such interventions are provided by dentist office according to contract concluded between prison and such office.
- Despite highly present problem of prisoners' drug addictions, approach to resolution of this problem is not systematic, which is a problem springing from the fact that prison doctors are mainly employed according to temporary contract of work. There is not comprehensive and strategically targeted policy for prevention of this evil.²
- It is well-known that before the war security measure of obligatory psychiatric treatment and keeping in medical institution was executed in specialized and for this purpose designed Psychiatric clinic Sokolac (Republika Srpska), so since the war in FBiH there is no such medical institution. In 1996 department for execution of security measure of obligatory psychiatric treatment was created in prison Zenica, yet this was a pore improvisation, since the department never met minimum of conditions needed for execution of mentioned measure.
- With regard to *medical treatment of drug addicts*, and execution of measure of obligatory psychiatric treatment as well, the main method is pharmacotherapy and actually it is the only method applied (including relatively satisfactory outdoor places for walk in the open air and physical activities at sport field according to prescribed schedule). Entire concept is that the patients do nothing, without occupational therapy or individual plans supported by multidisciplinary team, which must be ensured related to such forms of treatments. What also concerns is inadequate number of professional staff (in most of the institutions there is not a single doctor,

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² We cite the case of death of a convict J. in medical solitary in Zenica prison who died because of overdose. Following insight in documentation of this disputable case, it could be concluded that the convict J. was firstly taken to hospital in Zenica, then brought back to prison and placed in prison stationary. The convict in stationary torn out infusion, started to break the things and became verbally and physically aggressive towards prison staff and, due to described destructiveness and self-destructiveness, was put in medical solitary of disciplinary department of II Pavilion where he was under constant video surveillance and frequently visited by the guards and medical technician. Nevertheless, his health condition rapidly worsened and he died despite of swift intervention by the guards and medical technician.

psychiatrist or social worker employed neither there is enough medical staff of secondary schools education.

4.5. Abuses in prisons

- 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.
- Big problem seriously endangering security of certain prisoners is collective serving sentences system, which functions with relatively low degree of surveillance due to insufficient number of guards and number of scattered objects within some prisons (Zenica, Foča).
- From the interviews with prisons staff and a number of convicts ombuds-staff learned that high-risk prisoners serve their sentences in the institutions, persons who, outside of the institutions or in the institutions, participated in kidnapping of other convicts, organization of riots, mass fights, burning of prison rooms, escapes, violent behavior towards other convicts, violent behaviors and disablement of of guards to perform their duties and other forms of destructive activities and informal organizing. It is unacceptable 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 criminal offences, such as traffic criminal offences.
- Evaluation of risk is one of the most important area of activities of prison staff, who, according to House Rules and Rules on Benefits, are to classify convicts into risk assessment groups, and, depending on success achieved, to reclassify them. In this respect there exist serious concerns, since *risk evaluation*, as the

most important method that can contribute to identification of such prisoners who are dangerous for themselves, staff, other prisoners or broader community, is not enough taken in consideration.

- 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 (leg or hand punches, laud 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 these occurrences should be examined by prison managements and competent ministry.
- In visited prisons there is a lot of violence between prisoners, so it is not surprising that some prisoners are worried for their safety. Violent incidents between prisoners take places regularly in almost all prisons. In prison Zenica several prisoners complained about large-scale violence from subtle forms of maltreatment to open threats and serious physical attacks. In most of the prisons there is not adequate accommodation for vulnerable prisoners, as well as for those that need higher level of security.

4.6. Hygienic and sanitary conditions, food, work and recreation

• In large number of 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, heat and ventilation. Quite illustrative is County Jail in Doboj where concrete blocks are placed on the windows, so daylight or fresh air can not come in. In correctional institution in Mostar the windows are covered with blinds or blankets, which create conditions for spreading of diseases and general anxiety among the prisoners. Bathrooms in prison Bihać are also concerning, since bathrooms are without doors and, instead, there are blankets, so that the prisoners are not ensured their privacy and frequently get colds.

4.6. Food

- The Ombudsmen paid particular attention at food provided to prisoners and detainees and determined that food varies from institution to institution. So, for instance, prisoners of Kula had no objections about food, while in prison Bihać prisoners complained about repetitive, insufficient and food of no quality, which is confirmed by the fact that prisoners get fruit only on holydays. In Sarajevo prisoners say that sometimes the get food or juices of expired shelf life.
- It is noticed that quality of food is better in the institutions where most of the food for prison kitchens is ensured from economy units owned by some of the institutions.

4.7. Work and free activities

• In a number of correctional institutions the prisoners are provided opportunity to work.³ Some institutions are able to provide more, some less of work capacities where the prisoners could exercise this opportunity. Some institutions maintain catering facilities, restaurants of open type, (Kula, Tuzla, Foča, County Jail Bijeljina);

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³ Prison Banjaluka owns sawmill, woodwork and locksmith shop, mini bakery where several prisoners and professional backer work. In County Jail Bijeljina, on the farm »3maj» where prisoners do pigs rearing and agriculture. The rest of them are occupied with administrative business in management building. Prison Kula owns enterprise « Privrednik». Besides, prisoners do agriculture, production of eggs, pigs rearing. There is also a metal crunch and workshop for constructional materials.

Prison Foča owns unit »Drina», which, within the prison, deals with production of furniture pieces. Additionally, outside of the prison, by the river Čehotina, there is farm for production of meat, milk and eggs. Apart from mentioned activities the prisoners various service activities (constructional works) performed based on contract between the prison and customer. Prison Bihać owns economy unit «Kvalitet» but the prisoners are not interested to work. Prison Mostar owns unit «Bare» where the prisoners do agriculture, pig, hens and turkey rearing. Ten to fifteen prisoners are daily engaged in the work in «Bare». Those who have not possibility to work in "Bare" are not happy doing nothing and practically they feel isolated. Further, they stress that prisoners with shorter sentences are engaged in work in "Bare", and those with long sentences stay in the cells. Prison Sarajevo owns its unit in Ustikolina and an object on mountain Igman, where the prisoners work in greenhouse for vegetable. Prison Tuzla owns Kozlovac farm where prisoners are occupied with cattle breeding crop farming and fruit growing. Besides, there are also woodwork and locksmith and car mechanic shop. Zenica prisoners work in unit Novi život, which provides a lot of vegetable, satisfying needs of the prison for this kind of foodstuff. Inside this prison there are foundry, car mechanic shop and woodwork. Prisoners also work in the kitchen, internal restaurant, cantina, heating boiler and tailor shop.

- Prisoners' interest for work is quite considerable, so it is not possible to provide them with jobs, due to lack of work capacities. Those who work are paid for it, and the level of remuneration depends on type of work, quantity, quality and working hours. Prisoners' income is put in their accounts, through which they by necessary things as long as they are imprisoned or for their needs at the time of usage of benefits.
- In almost all correctional institutions quality conditions for free time spending are created and for this purpose in prison Zenica there are sport fields for football, basketball, mini gym, and table tennis⁴.
- Yet, in some institutions organization of walks and stay in the open air is still not resolved in an adequate manner. For instance, in prison Tuzla there is only a small space for walking and in a part of it there is a small basketball field and a mini-gym. With regard to daily walks, similar problems exist in prison Sarajevo. The yard is very small and it is hard to say whether it fulfills its purpose. In Ustikolina, Department of prison Sarajevo, there is not a sport field neither there is any active section.⁵

4.8. Religious needs

• In most of the institution the issue of rooms for religious needs is resolved. Unfortunately, this issue is disregarded with explanation that there are not rooms or that the convicts do not show interest for exercise of this right. So, in prison Sarajevo there are only rooms for Catholic and Orthodox religious

⁴ In this prison there is also a cinema with 250 seats. In prison library there are 7.000 books and the prisoners are pretty interest for books. There are three rooms for religious activities: Muslims, Catholics and Orthodox. There are also painting and graphics workshops, and money earned from pictures selling is used for procurement things needed for computer, physical training, chess and other sections.

⁵ In prison Mostar there is a yard with benches where prisoners can have their daily walks. There is also well equipped gym. In prison library there are 300 books and the prisoners are pretty interest for reading.

In prison Banjaluka there is a yard with benches where prisoners can have their daily walks, recreation field and two public telephone boots. There is also a small swimming pool but it is not clear whether it is functional. There are painting and carving sections, too. In County Jail Bijeljina there is a very small yard with several benches. There is also a weight lifting bench.

In prison Foča there is a big yard for walking, sport fields for football, basketball and volleyball. There is also a cinema, library with 5.000 books and rooms for religious activities.

activities, while there is not room for Muslim religious activities, since this room is remodeled into administrative premise.

4.9. Objections and complaints

- In most of correctional institutions in BiH there is informal system of lodging complaints by persons deprived of liberty, which is exercised through direct verbal contacts, or through council of convicts, with warden, staff of treatment service and in minimal number with security service. Such convicts' verbal complaints are frequently not adequately answered, and sometimes they never get any answer.
- With regard to written complaints, most of interviewed prisoners state that in main number of cases complaints are positively resolved, however, there is not time limit for lengthiness of the procedure including the fact that lengthiness varies from prisoner to prisoner. According to prisoners, complaints by persons classified as dangerous are resolved in more swiftly manner. The prisoners also state that in the cases where resolution of complaint is not possible, they have no-one to address outside of the institution, and even if they address to a certain organ, it happens that they wait for the answer forever. Such allegations by the convicts are mainly negated by managements of the institutions.

V. RECOMMENDATIONS

From the aspect of protection of the persons deprived of liberty it could be concluded that Bosnia and Herzegovina does not have adequate and with European Prison Rules harmonized normative framework.

The level of quality related to application of existing legislation and applicable regulations is at most restricted by lack of financial resources. Above mentioned is mainly visible from numerous lacks concerning conditions and accommodation in the institutions where persons deprived of liberty are placed (particularly poor hygienic conditions), inadequate health protection and limited prisoners' personal safety. Due to this, the persons deprived of liberty can not exercise certain rights that are in conformity with modern trends, which results in disregarding of the purpose of execution of the sanctions, the purpose of which is that the convicts, through application of modern correctional measures, accept socially acceptable values with a view to easier inclusion in conditions of life in freedom and to behave in accordance with law and citizens' duties. Starting from explained facts and assessments and having in mind commission of BiH to ensure application of the highest level internationally recognized rights and freedoms established also by the BiH Constitution, BiH Ombudsmen, in accordance with article 32 of the Law on Human Rights Ombudsmen of BiH, and with the purpose to eliminate determined human rights violations

RECOMMEND

I

- The Ministry of Justice of BiH
- The Ministry of Justice of the Federation of BiH
- The Ministry of Justice of Republika Srpska
- The Managements of institutions for execution of criminal sanctions
- 1. To undertake urgent measures for harmonization in the area of execution of criminal sanctions in BiH with the purpose to prevent unequal position of the suspects which is a human rights violation;

- 2. To establish coordinative mechanisms for observation and implementation of execution of criminal sanctions in BiH, particularly through establishment of data base on capacities of institutions for execution of criminal sanctions and final court decisions where imprisonment is pronounced, with a view to elimination of appearance of overcrowded prisons. Establishment of triage centers on entity levels for all convicted persons, which would eliminate all possible abuses in prison accommodation of the convicts.
- 3. Classification of the institutions for execution of criminal sanctions according to European Prison Rules, which would make difference between accommodations of persons convicted for the most serious crimes from persons convicted for less serious criminal offences. With regard to this issue, it is of particular importance to follow up transfer of convicts from correctional institutions of closed type to institutions of half-opened type;
- 4. Reconsideration of existing systematization of working posts in the institutions and their harmonization with established standards. This applies to staffing of the institutions, particularly the guards and correctional services, which should necessarily be based on new by-laws on internal systematization, including elimination of unequal treatment of the institutions regarding staffing, which is particularly characteristic for FBiH;
- 5. Reconsideration of existing systematization of working posts in the sectors for execution of criminal sanctions in ministries of justice, since, in this segment, existing number and structure of systematized posts obviously can not ensure implementation of competencies of ministries of justice. Urgent measures for vacant staffing of systematized posts in ministry of justice;
- 6. Preparation of plan and organization of systemically continued program for professional improvement of the staff working in institution for execution of criminal sanctions and implementation of programs for prevention of prisons staff "burn out" syndrome;

- 7. On the occasion of employment of new workers in the institutions for execution of criminal sanctions to ensure strict respect for envisaged and prescribed conditions for employment, which particularly applies to prescribed education level and qualifications, and on such occasions to take in account ethnic origin of new employees in order to improve ethnic structure of such workers in the institutions for execution of criminal sanctions in Bosnia and Herzegovina;
- 8. Finding out solution for implementation of measure of obligatory psychiatric treatment and keeping in medical institutions;
- 9. In cooperation with centers for judges and prosecutors education to ensure possibility of pronouncement of other sanctions prescribed by criminal legislation, such as socially useful work, and creation of possibility for execution of mentioned sanction;
- 10. Establishment of rules and procedures for evaluation of risk and convicts classification;
- 11. Increase of possibility of convicts' work engagement through introduction of new methods of employment with obligatory review of effects of work in objects outside of correctional institutions, since there are opinions on abuses related to this form of work engagement, including cautiousness by main number of prison managements;
- 12. Establishment of rules for prisoners' education to eliminate unequal treatment in the field and leaving this right to be decided by prison managements only. Prisoners education should be ensured through cooperation with entity ministries of science and education and involvement of professional cadres for implementation of various educational programs for prisoners;
- 13. Preparation of programs for permanent education of prisons staff from the area of human rights through organization of targeted lecturing and seminars on application of European Convention on Human Rights and European Prison Rules;

- 14. Preparation of procedure for treatment of convicts with drug addiction including procedures related to the cases of smuggling drugs into prisons, consuming and drugs dealing in the institutions;
- 15. Ensuring of education and professional training of prisons staff and inclusion of civil society for implementation of special programs for development and improvement of special programs for prisoners with specific needs, such as addicts and alcoholics, those who suffer from hepatitis C, hunger strikers, etc.;
- 16. Review of decision-making process on outside benefits, and preparation of uniform principles related to decisions on these possibilities, and introduction of instances for review of first instance decisions;

H

1. Ministry of Justice of BiH

 To speed up activities related to construction of state prison to ensure equal treatment of persons convicted by BiH Court, particularly having in mind limited capacities for accommodation of such convicts in existing institutions (in BiH there are only two institutions of closed type);

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2. Ministry of Justice of the Federation of BiH

- Immediately to undertake measures to stop sending convicted persons to prison in Sarajevo and transfer of prisoners due to poor conditions in this institution;
- Undertaking of measures for resolution of legal status of objects "Igman" and correctional institution Tomislavgrad, Department Busovača, since it is unacceptable that convicted persons are sent to the prisons that legally do not exist;

• Review complaints of convicts related to food in prisons in Bihać and Sarajevo;

• Undertake measures on resolution of the problem of stationary in correctional institution in Tuzla;

IV

3. Ministry of Justice of Republika Srpska

 Reconsider justification for increase of capacities of County Jail in Doboj and undertake measures with a view to elimination of extremely poor hygienic conditions in this institution.

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Competent ministries and institutions referred to in above recommendations within 30 days are to inform BiH Ombudsmen on activities undertaken for implementation of the recommendations.

Banjaluka, 14.09.2009.