



**Civic Solidarity Platform**

**Helsinki Committee  
for Human Rights in Serbia**

OSCE Regional Workshop, Belgrade 24 - 25 February 2014

**CSO Recommendations for the  
Prevention of Torture  
and Ill-treatment in Closed Institutions**

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The following recommendations have been drafted and discussed at a two-day workshop in Belgrade uniting representatives of civil society and Ombudsman offices from Belgrade, Ljubljana, Podgorica, Prishtina, Sarajevo, Skopje, Tirana, and Zagreb. The recommendations are an image of the regional issues in the field of the prevention of torture and aim to remind OSCE participating States about their international obligations and OSCE commitments. The assistance of the OSCE, its institutions and field missions in supporting the participating States, according to their mandates, to implement these recommendations is of crucial importance.

During the workshop, representatives of civil society organizations classified the recommendations into the three most important groups: legislation, implementation of legislation and oversight mechanisms.



## Legislation

### **OSCE participating states should:**

- Actively involve civil society in the drafting of legislation;
- Bring the provision of torture in domestic law of OSCE participating states in line with Article 1 of the UNCAT, reflecting all the components contained therein;
- Ensure that the offences contained in the domestic crime of torture are punishable by appropriate penalties which take into account their grave nature (as set out in Article 4.2 of the UNCAT);
- Ensure in law that all allegations of torture and ill-treatment as well as excessive use of force are promptly and impartially investigated. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should be subject to suspension or reassignment during investigation, especially if there is a risk that person might influence the investigation;
- Ensure that every individual who alleges that he or she has been subjected to torture or ill-treatment has the right in law to complain to the competent authorities without any impediment;
- Ensure in law that victims of torture and ill-treatment are effectively protected and that they are not further distressed or pressurized to withdraw their complaints or testimony and that they are not threatened by the alleged perpetrator;
- Ensure that all victims of torture and ill-treatment have a legal and enforceable right to fair and adequate compensation, including the means for the fullest possible rehabilitation in accordance with Directive 2012/29/EU;
- Introduce legislative provisions to provide for independent medical examinations in places of detention;
- Establish in law the maximum length of pre-trial detention, if not already stipulated;
- Introduce provisions in law to ensure that during recruitment, law enforcement, prison and security personnel are sufficiently vetted in practice and are excluded from such positions, if shown to have criminal records;
- Harmonize by-laws and related regulations with international standards. Such subordinate legislation and regulations should be readily accessible to all interested persons, including persons deprived of their liberty;



- **Bosnia & Herzegovina** should expedite the entry into force of the related legislative changes required to establish the country's National Preventive Mechanism (NPM);
- **Kosovo** should make the necessary legal changes in order for civil society actors to be included in the country's domestic detention monitoring arrangement;
- **Albania** should make a declaration under Article 22 of the UNCAT in order to recognize the competence of the UN Committee to receive individual communications.

### Implementation of Legislation

#### **OSCE participating states should:**

- Bring into line conditions of detention in all places of detention with regional (CPT, ECHR) and international standards (numerous international documents and standards: Convention against Torture, European Prison Rules, Recommendations of the Committee of Ministers, etc.)
- Take steps to reduce prison overcrowding by expanding non-custodial forms of detention (including through fines, community service orders, probation orders, restorative justice related practices or a combination thereof);
- Be mindful of the high financial cost of incarceration and its negative impact on state resources;
- Embark upon a program to deinstitutionalize psychiatric care and move to community-based systems of care provision;
- Ministries of Health in all countries in the region should be in charge of prison health care provision and related staff;
- Provide the persons deprived of their liberty in psychiatric hospitals with adequate psycho-social and psychiatric care;
- Establish specialized forensic institutions so that the persons suffering from severe mental health difficulties and/or convicted of serious criminal offences are placed in an appropriate clinical setting, as prescribed by international standards;
- Introduce continuous in-service training for health care staff on the Istanbul Protocol;



- Ensure that law enforcement officials and detaining authorities apply non-violent means before resorting to the use of force and regulate this practice in accordance with law, respecting the principles of proportionality and necessity;
- Ensure that any relevant medical records concerning the use of force and ill treatment, which is not in accordance with CPT standards and other relevant regulations pertinent to human rights and rights of patients and convicted persons, are readily available to doctors who are part of the detention monitoring/oversight teams as well as to other relevant actors (prosecutors/judges) and these records should also be readily available at the given detention facility;
- Fight impunity by ensuring prompt and effective investigations into all allegations of torture and ill-treatment and prosecute and punish the perpetrators with appropriate penalties commensurate with the nature of such crimes. Courts should not impose lower sentences within existing penalties on persons who commit acts of torture and ill-treatment;
- Make sure that every individual who alleges that he or she has been subjected to torture or ill-treatment has the right in practice to complain to the competent authorities without any impediment and that such persons have access to their medical file upon request. In line with the European Committee for the Prevention of Torture, provide all detainees and prisoners with information on the possibilities for lodging a complaint, including the right to correspond on a confidential basis with outside judicial and complaints' mechanisms, and install closed complaints boxes in all detention facilities and provide complaints forms and other materials. Clearly articulate these provisions in legislation and all subordinate regulations;
- Oblige authorities receiving complaints to respond to such complaints within a stipulated period of time and to further investigate the complaint, including through the interviewing of the complainant;
- Effectively protect victims of torture and ill-treatment in practice and make sure that they are not further distressed or pressurized to withdraw their complaints or testimony and that they are not threatened by the alleged perpetrator;
- Organize ongoing and continuous training of all police custody and prison staff on the prohibition of torture and ill-treatment and the rights of detainees. Other professional groups with key roles to play to prevent torture such as health care professionals as well as judges, prosecutors and lawyers should also be subjected to such training programs;



- Provide statistical data, disaggregated by crime, ethnicity, age and sex relevant to complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel as well as on means of redress, including compensation and rehabilitation provided to victims;
- Remove any statutes of limitation in law related to the crimes of torture and ill-treatment, as clearly stated in international law;
- Ensure that prosecutors are mandated in law to visit places of detention. Prosecutors should actively execute this function with a view to identifying systemic shortcomings which permit violations of rights to occur and they should also document violations of standards;
- Ensure that prosecutors thoroughly and effectively investigate all alleged cases of torture and/or ill-treatment and ensure that they put forth an effective fight against impunity.
- Have a systematic oversight of prosecutorial activities to prevent torture and hold perpetrators accountable.
- **Albania** should set up a forensic institution to accommodate persons under obligatory medication measure issued by court decision as it is prescribed in national and international standards;

### Oversight Mechanisms

#### **OSCE participating states should:**

- Actively include civil society actors in the monitoring activities of NPMs. Both NPM and civil society actors involved in the joint monitoring work should respect the principle of independency on the one hand and on the other should cooperate in such a way as to guarantee an effective cooperation respecting transparency of actions taken jointly and informing each other on such actions/recommendations with respective authorities. Such mechanisms should also actively cooperate with other civil society actors not directly engaged in such monitoring activities;
- Ensure that NPMs are provided with adequate human, financial and materials resources to ensure their effective operation in practice;



- Guarantee the functional as well as financial independence of NPMs in law and ensure that such independence is respected in practice;
- Judiciary should have a mandate in law to visit places of detention. Judges should be actively encouraged to visit places of detention with the aim of identifying system related shortcomings which permit violations of rights to arise and documenting violations. Such findings should be documented in public reports;
- Bolster and reinforce the role of media as a tool in creating a culture of absolute non-acceptance of torture and ill-treatment. States can be assisted in this task by the OSCE Representative on Freedom of the Media.

**Specific recommendation:**

- **OSCE chairmanship and OSCE missions** are encouraged to support the network of civil society organizations in the Balkan region in their joint concrete actions and initiatives with regard to the eradication and combat of all forms of torture and ill-treatment in places of detention and other closed institutions.

Participants of the workshop: APT Association for the prevention of torture, Geneva; Belgrade Centre for Human Rights; Centre for Civic Education, Podgorica; Civic Initiatives, Belgrade; Civic and Legal Initiative Center, Tirana; Civic Solidarity Platform, Moscow; Forum for Ethnic Relations, Belgrade; Gay straight alliance, Belgrade; Helsinki Committee for Human Rights in Albania, Tirana; Helsinki Committee for Human Rights in Bosnia and Herzegovina, Sarajevo; Helsinki Committee for Human Rights in Macedonia, Skopje; Helsinki Committee for Human Rights in Serbia, Belgrade; Humanitarian Law Centre, Belgrade; Human Rights Action, Podgorica; Human Rights House, Zagreb; IAN, Belgrade; Kosovo Centre for Rehabilitation of Tortured Victims, Prishtina; Labris, Belgrade; Macedonian Committee for Young Lawyers, Skopje; Mental Disability Rights Initiative, Belgrade; NUNS, Belgrade; Ombudsman Office, Sarajevo; Ombudsman Office, Podgorica; Ombudsman Office, Belgrade; Ombudsman Office, Ljubljana; Policy Centre, Belgrade; Sarajevo Open Centre; the Primus Institute, Ljubljana; TransConflict Serbia, Belgrade; Youth Initiative for Human Rights, Prishtina; YUCOM, Belgrade.