

## **CHRNis Contribution 2011, dealing with civil and political rights/ prison conditions and situation**

This Report has been produced based on information collected during realization of three projects: ``Coalition for prison reform`` (December 2008- Jun 2010)/ EC Delegation; ``Extended coalition for prison reform`` (December 2009 – Jun 2011) Delegation of EU to R Serbia, ``Step by step through the prison system reform`` (December 2010 – Jun 2012)/ Delegation of EU to R Serbia; and direct addressing from the prisoners by different means (letters, phone calls). The report covers period April 2010 – April 2011.

### **1. Prison system**

#### **1.1. Overpopulation**

Overpopulation is a problem that has existed for a very long time and which is regularly stated while the crowdedness is getting higher and higher.

Number of prisoners in prisons in Serbia is alarmingly huge, approx 11.500. The number of prisoners itself, already presents degrading and inhumane treatment.

In existing present conditions of overpopulation the possibilities for prisoners' effective regular control by competent services is significantly reduced.

**From the discussions with prisoners we found out that the security service use force sporadically and with an aim to threaten, i.e. to establish domination and not as before when the use of force was adequate for the incident but it was unjustifiably prolonged or was exceeding the necessary use of force.**

The amount of drug in prisons is so high that it probably contributes the non-existence of bigger rebellions (we are not sure about the number of smaller rebellions, except for some).

It also means that informal groups get stronger, expand the area of activity and kinds of pressures they use in order to accomplish their goals. The other generator of their power derives from canalling dissatisfaction which arises among ordinary prisoners due to inhumane conditions which as well objectively influence the reduction of the extent of the rights that they have according to the Law. Informal groups fill up the gap caused by disfunction of formal system (information resource- interviews and prisoners' letters)

We should remind that in previous period Treatment service, due to the enormous number of prisoners per treatment officer, was not able to realize even basic communication with the prisoners with whom they were supposed to work.

Prisoners' categorization loses its sense in this way.

Prisoners cannot make advancement through categories because of good behavior since there is no one to check and recognize it as well as there is no free space in better pavilions/ departments, which is considered as a part of reward for good behavior.

This leads to negative motivation for re-socialization **(it means that current disrespect of law is worse for one's mental state and prisoners' behavior than that it would be in the case when the imprisonment system implies isolation of a person from the society without existence of any re-treatment element).**

Strategy for reduction of overpopulation was adopted. The strategy says:

``.....In prison population in the Republic of Serbia a number of detained or sentenced for the commitment of severe criminal acts with elements of violence and organized crime increases, the age limit of criminals reduces and a number of addicts increases, primarily drug addicts (over 60% of prisoners had drug experiences or are active drug addicts).."

This document has, in its title, reduction of overpopulation, however, impression is that its text is formulated in the function of alternative sanctions and all the other measures are supporting. From the media we got information about the procurement (hopefully use) of 200 handcuffs (part of alternative sanctions) which is an insignificant number of those who will not make additional burden to the existing 11.500 prisoners.

CHRNis considers that this strategy, when it will be applied, will not significantly contribute to the reduction of overpopulation in the biggest prisons- Penitentiaries (Nis, Mitrovica, Pozarevac) in which, those sentenced for the hardest crimes are accommodated. The reason for such an attitude is that a greater number of new prisoners with longer sentences is expected (see previous quotation about the trend, Strategy for reduction....)

If the linear amnesty which would reduce the number of prisoners to the capacity of institutions is applied, and this strategy is implemented furthermore, it would probably have effect.

**The most important thing about overpopulation is that it is still not a controlled problem but it has its individual life.**

## **1.2. About the institution; NGO access to prisons**

One of the obstacles to the implementation of reforms is dividing into: employees in an institution and the others (what is the main characteristic of total institutions which exist for the sake of their own and not for their beneficiaries). A large number of omissions and violations of prisoners` rights are white-washed, which is considered as an expression of solidarity among colleagues and services, and it is in fact the other side of the informal system, this time through the system.

Behavior of totalitarian institution on the example of enabling access of NGOs to prisons:

There is no defined criteria what a NGO should fulfill so as to have approved access, nor what is the procedure for getting an approval (which enables manipulation of NGO and sporadic issuing of approvals leads to a confusion who is really in charge of giving permissions and what "appropriate behavior and reporting means" in order to be privileged)

Since there is an information (not awareness) in the enforcement system, about the fact that the access of NGOs should be enabled (which is also stated in the Law on the Enforcement of Prison Sanctions), then, there is a probability of giving consent for the realization of the whole project, which, formally, contributes to an image of an open institution ready for reform.

However, bearing in mind sufficient experience that we have, we can say that here the strategy of obstruction is applied (Annexes: P1, P2). After 10 months of trying to get the permission for the visit, one may get 1-2. NGOs achieve some result and are to be happy because

they somehow saved the project, while the whole project and what was to be realized is almost completely annulled.

Such a behavior is pretty difficult to explain to the people coming from the well managed parts of the world- where written ``yes`` means practical ``yes``. Most often in the end, we explain the behavior of the system with full understanding for hard working conditions and phase of the reform, where simply, the transparency cannot be enabled. Of course, some security reasons are mentioned because it is easier that way and it is not necessary to go deeper into the genesis of the problem. Such behavior qualifies this institution as a member of a group of totalitarian institutions which exist because of themselves, not because of their beneficiaries.

### **1.3. Hunger strikes**

Prisoners more often than before, recently use hunger strike as a means of nonviolent achievement of rights that belongs to them according to law and which otherwise can not be achieved. This, above all, points to certain belief of prisoners in non stringency and inefficacy of mechanism for the protection of their rights by lodging complaints, both within Penitentiary and to Directorate for execution of Prison Sanctions.

At this moment CHR-Nis implements two activities which are somehow related to the hunger strike. One is monitoring of medical follow-up of the strike and has been lasting for almost 10 months. We have started with the assumption that there would be around 15 hunger strikes, in all prisons, for the year. For the time being we have 11 confirmed cases and out of that number only one case was reported by Directorate while the others reported the hunger-strikers, by phone.

We have heard from two prisoners from Zabela that they are not allowed to make phone calls when they are on hunger strike.

WE assume that the total number is higher than the number that we have expected- and we cannot say the exact number because, even after the end of the activities, we will not have a clear image. The purpose of this activity is the improvement of work of medical services.

From previous experience we know that the work of medical services is perfunctory, superficial and far below valid standards of medical profession in Serbia. As we see it, the main reason for this lies in the fact that the work of medical services in prisons is not in the competence of the Ministry of Health but Ministry of Justice which has no capacity to guarantee for taken over responsibility.

Note: Only one case of the reported by prisoners was false. The prisoner tried, by simulating the hunger strike, to force out appropriate medical treatment. The prisoner should be in a position to ensure adequate medical treatment without starting a hunger strike, with no engagement of the lawyers and organization for the protection of human rights. Each institution for the enforcement of prison sanctions is obliged to provide appropriate medical care for each prisoner that is serving sentence.

### **1.4. Situation of disabled prisoners**

At the moment of monitoring visit (22.01.2010.) whose target group were disabled prisoners, we identified following system and procedural lacks:

- The lack of procedures for the engagement of an interpreter for sign/ gesture language in the process that prisoner goes through during admission.
- Lack of procedures which implement engagement of an interpreter, prescribed by law, at any stage of sentence serving, when necessary.
- Lack of engagement of personal assistants for disabled persons who need it.
- Lack of conditions for adequate daily stay of disabled persons in Nis Penitentiary and it is reflected in: (1) the existence of architectural barriers at the access to, at least, the following facilities: health care unit, hospital, dining room, library ....., (2) the lack of sound signals and belt for movement of the blind, (3) the lack of practice of engaging an interpreter for sign/ gesture language, (4) lack of personal assistants.
- Insufficient sensibility and appropriate professional skills of prison staff working with persons with disabilities.

First step for the provision of adequate accommodation for the prisoners with disabilities is to know: the exact number of them, the type of their disability and remaining sentence serving time. Based on this information, adaptation of some penitentiaries could be planned. That is why we planned the activity of the creation of database and we got the consent from Directorate. During almost 10 months of the activity (from the planned 12) so far, we have not received any data (03.2011.). This is another example of ignorance whose result should be obstruction of planned.

### **1.5. Situation of prisoners, members of minority groups in wider sense**

According to the national structure of sentenced persons, minorities in the wider sense constitute about 20% of the total prison population in Penitentiary Nis.

From the official data obtained during the project it can be seen that the minority members in percentage of over 90% are set in the lowest two categories (V2 and V1), although from the records of disciplinary proceedings a conclusion could not be drawn that the prisoners - members of minority groups are less disciplined than members of majority. Following categorization, members of minorities are, with negligible number of exceptions, are set in the in the pavilion where the physical conditions of stay are extremely poor.

### **1.6. Education for prison services:**

For proper enforcement of law regulating stay, rights and obligations of prisoners during serving their sentence, besides appropriate sensibility (for human rights, and we do not believe that Directorate's staff/ educators are sensibilised for human rights values which is a precondition for them to be able to teach), it is necessary to provide additional education of employees in institutions about the so far achieved standards in Serbia, as well as about internationally accepted standards from this area.

This knowledge includes a qualitatively different and new contents compared to the knowledge acquired at the time when the employees were educated and graduated and nowadays represent general education and information. For example: anti-discrimination laws, rights of minorities in the wider sense, gender equality, poverty reduction measures, etc...

## **2. Prevention of torture and ill treatment**

For the purpose of torture prevention and detection of cases of torture, CHR-Nis provides legal assistance in disciplinary procedures started against prisoners because of incident in which baton or physical force were used by Security service.

In only one procedure we came across the following lacks:

### **Disciplinary procedure, summary**

On 23.02.2011. in the premises of Niš Penitentiary, a session of Disciplinary Board was held in the procedure of determining disciplinary offence of prisoner I.V.

(1)

Prisoner I.V. was charged with a serious disciplinary offence from the Article 145, Paragraph 1, point 10 of the Law on the Enforcement of Prison Sanctions. This offence is committed by a prisoner who refuses to carry out the lawful orders of the authorized person for which reason occurred or may occur serious adverse consequences.

As an act of a criminal offense it was stated that the convicted swore senior commander (where the content of the swear is also disputable)

However, neither the disciplinary charges, nor in the defense of a convicted person, or in the testimony of witness – security service officer, it was not stated that any warrant or order was issued to the prisoner.

(2)

The prisoner I.V. stated that three prisoners more were also present when the incident happened. Two of them are still in the Penitentiary. The defense asked to have these two witnesses heard as immediate witnesses of the incident. This proposal was rejected with oral explanation given by the president of the Board that "these hearings are not necessary after the officers were interviewed since they confirm that the incident happened as given in disciplinary charges"!

In this disciplinary procedure only proofs proposed by the submitter of the charges were carried out, while none of the evidence proposed by prisoner and defender were carried out.

(3)

At the same time the Board announced that prisoner I.V. had been found guilty. Defense and defendant were not given their right to expose final statement prior to the decision being brought by Disciplinary Board.

(4)

The defense is not familiar with the fact whether the use of physical force an night-stick was reported at all, and if this use was reported, was it properly documented. What is known is the fact that no medical examination of the prisoner was done.

Prisoner addressed the Center on 25.01 immediately after the incident and at that moment he did not know whether the disciplinary procedure against him would be initiated. He had information about the activities that we implement/ advocating in disciplinary procedure in case when a night stick was used against the prisoner in the incident.

(5)

Besides that, Disciplinary Board did not show, with a single word, that it was interested to initiate any process against the commander for eventual abuse and beating of the prisoner who spoke about that during the proceedings.

(6)

We believe that in the latter cases there would be not so much negligence in the work of disciplinary commission, since we believe that they have become aware of our presence. We forwarded the report on this case to international organizations in Belgrade, Ministry for Human and Minority Rights, Directorate for the enforcement of prison sanctions and translation of the report to CPT.

### **3. Fight against impunity**

Submitting charge, hearing, decision making and mostly sanctioning in disciplinary procedures against prisoners are simplified and speeded up to the very end, mostly to the damage of procedural rights of prisoners.

On the other hand, the situation is completely adverse in situations where prisoners submit complaints against officers. The law is fully respected and burden of proving is on the prisoner which is in line with the law. In that situation the prisoner is brought into worse position in relation to the officers because his position does not allow possibility to effectively collect evidence and ask for fast and independent investigation. That is the reason which prevents them to submit a complaint against some officer and which a great number of interviewees give.

Some of them believe that the filing of the complaint leads to poor treatment of prisoners by staff. Some of the respondents submitted complaints on the work of prison officers to the Warden and Director of Directorate for Execution of Prison Sanctions and are not satisfied with the time of getting answers, nor with the result (no case is resolved in favor of the applicant).

This causes them to doubt in possibility of obtaining high-quality and above all impartial legal assistance by lawyers from Penitentiary and simultaneously discourages them to submit objections and complaints in cases of violation of their rights in the future.

CHRNis team member had insight in a decision from Penitentiary Warden written on 3 typewritten pages, where the backgrounds for the decision consist of three sentences in one paragraph. It should be stated here that the relevant decision is in fact a response to two complaints mentioned by name in the imposing of the decision, so that such backgrounds are more general it appears at first, since it is unclear how one and the same backgrounds can be used for two completely different things.

### **4. Conclusion related to prison system:**

Trend of regression has continued in this year.

### **5. CHRNis opinion related to Serbia's application for the EU membership**

We believe that, if the assessment was only based on the objectively estimated current condition of institutions, Serbia should get a negative response.

However, a wider framework of the image consists, as well from all the potential damage of current trend as well as the existence of a small number of people who deserve to experience the results of their work and many years' long efforts. If a positive reply would imply: (1) that in the future only realized results would be valued; (2) that the basic condition in relation to which achieved is assessed, would be reports of the missions which did screening (and it would be good if reports were available for public); (3) that all the time independent monitoring is being done, with better participation of NGOs; we would like that Serbia gets a positive reply.