

CHRNis Contribution for the 2010 Progress Report, dealing with civil and political rights/ prison conditions and situation

This Report has been produced based on information collected during realization of three projects: ``Assistance to the victims of torture``(2009)/ UNVFVT; ``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 and direct addressing from the prisoners by different means (letters, phone calls). The report covers period September 2009 – April 2010.

I/ General circumstances in this period which CHRNis considers important

1) Overpopulation

Number of prisoners in prisons in Serbia is alarmingly huge (in 2004 – 7.600; 2007 – 9.000; 2009 – 11.000; According to Ministry of Justice the maximum official capacity is 9.600. (Source: CPT report, 2007). The number of prisoners itself, already presents degrading and inhumane treatment.

One should bear in mind that in conditions of overpopulation the possibilities for prisoners' effective regular control by competent services is significantly reduced. It 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).

In conditions of overpopulation of Penitentiary it is not possible to implement parts of the reform objectives relating to achieving compliance with European standards in the area of imprisonment.

Amnesty should be considered as a possible measure that instantly gives results.

2) Newly adopted law on enforcement of prison sanctions and its application in the part which should contribute to reduction of overpopulation

Article 41, Paragraph 2 of the Law on enforcement of prison sanctions which came into force on 12.09.2009. anticipates cooperation between the court which declares a sentence and Directorate for enforcement of prison sanctions in the process of sending convicts to sentence serving depending on the number of available places in prisons. In the sense of this Article it is necessary that the Court asks for information from the Directorate regarding available places in prisons and only after that, if there are free places, to send the convict to a particular prison.

This Article of the Law opens possibility for Directorate that in a certain period of time stops the admission of new convicts to most crowded prisons.

During the period September 2009 – April 2010, the number of prisoners serving sentences in prison in Nis was on the constant level over 1300. As this number does not decline even after the adoption of the new Law on Enforcement of Prison Sanctions, which predicted that the Department for Enforcement of Prison Sanctions is not asked for consultation from the Court about the capacity of Penitentiary before sending a prisoner in each individual case to sentence serving. It seems that there is no channel of communication by which the law is applied in practice.

3) *Flu epidemic*

Flu epidemic was announced in November 2009 and was followed by an order of Director of Directorate which abolished external visits, including attorney, to prisons and prisoners. (On 16.11.2009. the lawyer of Center for Human Rights Niš, A.C. tried to visit the prisoner for an interview in Nis Penitentiary. He had adequate protective mask as a safeguard. He was not allowed to visit the prisoner with explanation that Order, issued by the Director of Directorate for enforcement of prison sanctions, abolishes any visit to the prisoners, as well as visits of lawyers, with an aim to prevent epidemic of flu, announced in the Republic of Serbia.)

Right to expert legal aid is one of the most important human rights anticipated by international contracts and charters as well as by the Constitution of the Republic of Serbia, and which cannot be abolished by sublegal acts, which include orders issued by the Director of Directorate for enforcement of prison sanctions.

Explanation that prisoners are deprived of this right with an aim to prevent escalation of flu virus and transmission into prison population is completely without grounds and it is not based on real facts. In the same period, employees in prison went home and were not subjected to quarantine what gave impression and idea that epidemic was misused.

4) *Obstacles to NGOs work*

During the period to which this report relates Centre for Human Rights-Nis implemented 3 different projects that deal with prisons. We put in great efforts in order to obtain approvals for individual visits by which the projects are implemented. It is evident that, the more the project is concerned with the protection of individual prisoners in the most difficult areas the more difficult is to get the approval. For the project that dealt with the detecting torture cases we failed to get any approval for the visit to Niš Penitentiary for the entire period of 2009th. Two cases of torture which CHR Nis processes happened in this prison. .

We do not know what is the relation of Administration to other NGOs is. It is quite strange that the director of Directorate himself, decides about giving the approval for each individual visit or any other activity both NGO's and prisons staff towards NGO (e.g. whether wardens in prisons can provide information which prisoners are disabled). What is still missing is a neutral procedure that allows NGOs access to prisons and it would have to be quick, not just efficient. It is of great importance to respond to prisoner's urgent calls in short periods of time.

5) *Openness of Directorate for information on the cases of corruption*

There is still openness of Directorate representative to accept the information on the cases of corruption. A mother of a prisoner addressed us (from Cacak) who does no longer want to pay for

drugs used by her son in prison (Nis Penitentiary). She was regularly paying the amounts to a certain bank account. She addressed the Centre because she had heard about us from other prisoners' family members and that we might be able to help her. Another important information was that there was still a large number of prisoners' mothers in the same position who wanted to take up something in order to end this situation and she was in that group. The Coordinator conveyed the Information to Directorate and connected both sides. We do not have the feedback about the outcome of this case.

5) Cooperation with the Ombudsman Office

We believe that the Ombudsman' Office does still not have sufficient capacity for adequate engagement and timely response in the penitentiary system. Excessive understanding for the problems of employees in the prison system could be an obstacle for the successful advocating of prisoners' rights.

II/ Discrimination of prisoners, members of minority groups in wider sense, through the system and procedures

(Prisoners Bosniaks)

1. Disciplinary procedures: Lack of possibilities to conduct a procedure/s using the Latin alphabet, which is much more understandable by prisoners of Bosniak minority.
2. System lack of minimum material conditions for religious rites.

(Roma prisoners)

3. Disciplinary procedure: It is nowhere determined whether Roma (or other minority) prisoners know the Serbian language generally or well enough to be able to equally participate in the procedure. This fact is necessary to be determined prior to procedure.
3. There is no establishment of social and economic status of prisoners at the admission, based on which, provision of hygienic parcels or other appropriate assistance during sentence serving, without submitting a request.
4. Lack of measures of positive discrimination in the provision of jobs to the poor, for which they are qualified.

(Disabled prisoners)

5. The lack of procedures for the engagement of an interpreter for sign/ gesture language in the process that prisoner goes through during admission.
6. Lack of procedures which implement engagement of an interpreter, prescribed by law, at any stage of sentence serving, when necessary.
7. Lack of engagement of personal assistants for disabled persons who need it.
8. 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.
9. Insufficient sensibility and appropriate professional skills of prison staff working with persons with disabilities.

(Prisoners, members of small religion communities)

10. Lack of recording religion at the admission of prisoners.
11. Lack of making differences in recording between religion and nation (refers to Muslim - Bosniak).

(Prisoners Albanians)

12. Lack of recording the material status of prisoners at the admission to the institution.

13. Lack of mandatory existence of translated texts in the Albanian language (and languages of other ethnic minorities) of the Law on Enforcement of Prison Sanctions and by-laws issued in relation to the enforcement, and particularly regulations on House rules during their stay in the Admission department.

14. Lack of mandatory checks and determination of the level of knowledge of the Serbian language that would result in the engagement of an interpreter for a person who does not speak the language well enough, in all circumstances that the law anticipates, even if is not required by a prisoner him self.

15. Lack of extraordinary solutions at the state level that would enable the realization of the right to family visits to prisoners from territories with special status (at the moment Kosovo).

III/ 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.

More detailed overview is enclosed: **Annex 1**

IV/ Situation of the prisoners during sentence serving

1) Procedures in identified torture cases:

In this period CHRNI submitted two criminal charges in two torture cases. One can be considered a "lighter" but potentially more common case. The other one is more drastic and can be considered as an isolated case related to severe, several days long abuse by security service staff of a prisoner who had previously attacked a member of security service.

Both criminal charges were submitted in the end of December 2009 to a Primary Prosecution in Niš. Until the beginning of May 2010 we have received no feedback about taken actions and damaged were not contacted in the sense of giving a statement in front of the Court or Prosecution.

2) Foreign citizens who serve their sentences in Serbia:

There was information that foreign citizens who served their sentences in Serbia were accommodated in Sremska Mitrovica Penitentiary. From prisoners' letters we learned that there are accommodated in several penitentiary institutions.

Prisoners, foreign citizens are discriminated in the sense of accomplishment of a right to spend a free weekend (as a reward) at all, because danger of escape is widely interpreted. They are,

actually brought in a more unfavorable position compared to Serbian citizens and their motivation is reduced because their award is abolished and the only remaining things are sanctions.

More detailed overview is enclosed: **Annex 2**

V/ Problems from transition

Process of readmission:

Experience of CHRNis monitoring team is that Roma prisoners from Serbia speak and understand the Serbian language well. Of the two who lived in Germany, one speaks Serbian, the other one hardly.

We want to draw attention to the Roma who spent great number of years in Western Europe and would continue to arrive to Serbia on the basis of readmission agreements. Some of them will probably be prisoners. They usually do not speak Serbian, but only the language of the country from which they will arrive, and Roma language. Now is the right time to design and prepare in which way they will be provided equality and respect of law.

Roma prisoners:

With some Roma prisoners there is a problem of realization of family visits, because their wives do not have identity cards or any other identification document. In order to register a wife in the list of persons whose visits are approved, based on the request of sentenced person, it is necessary to specify the number of identity card so that that person could be identified for the visit.

Albanian prisoners from Kosovo:

All the prisoners, regardless of origin, residence and citizenship, according to the Law on Enforcement of Prison Sanctions have equal rights including the right to exercise contact with their families, which includes the right to visits. It is observed, however, that persons, whose relatives serve their sentences in Niš Prison and possess documents issued by UNMIK, are not allowed to cross the administrative border towards Kosovo and Metohia, move or stay in Serbia, and therefore there is no possibility of visits to prisoners who serve sentences in Nis Penitentiary. This is even more incomprehensible because jurisdiction of the UNMIK administration is based on resolution 1244, which the Republic of Serbia fully accepted. Therefore it is necessary to, at the level above the level of Directorate for Enforcement of Prison Sanctions, find acceptable solutions that will prevent further discrimination on this basis.

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), 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...

Organization of work:

Organization of services (generally horizontally and vertically) must be reconciled with the condition of respect of human rights of prisoners and can not be just taken over from the previous system, which was not based on respect of human rights. (Outdated installations - a new device).

Misunderstood meaning of solidarity:

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.

VI/ Conclusion:

Implementation of a part of one of the reforms is measured by the quality of life of the individual / prisoner: to what extent his rights are respected or violated. We are aware of the objective obstacles (on whose resolution should be worked far more agile, than just stated on the situation) such as overpopulation. Adopted laws and strategies are necessary starting points but the result of their application are a measure of change, which should be praised when implemented.

We consider that condition in the system of imprisonment is worse than last year, when the system was closing up and moved backwards, compared to previous period. What is missing are visible signs that this is only a temporary phase, that could follow up any accommodation to a new standards. However it has already become a trend of behavior in an old manner just in new conditions and with new ways of expression.