

## MONITORING MECHANISMS IN JUVENILE JUSTICE PLACES WHERE CHILDREN ARE DEPRIVED OF THEIR LIBERTY

### *Abstract*

*This article is based on national research conducted in Serbia by authors in the name of Belgrade Child Rights Centre as a part of international project “Children’s Rights Behind Bars – Human Rights of Children Deprived of Liberty: Improving Monitoring Mechanisms” coordinated by DCI Belgium and Juvenile Justice Project coordinated by International Management Group. The article intention is to present how the respect of children’s rights within places where children may be deprived of their liberty in the field of Serbian Juvenile Justice System is monitored and how children can enforce their rights in case of violation.*

**Key words:** *children’s rights, deprivation of liberty, monitoring mechanisms*

### 1. Introduction

Deprivation of liberty can be defined as any form of detention or imprisonment or the placement of a person in a public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.<sup>3</sup> In recent years, the Republic of Serbia has taken major steps to harmonize national legislation and to provide implementation of the rights on the children deprived of the liberty according to ratified conventions and international standards. Serbian legislation contains a number of statutory provisions

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<sup>3</sup> United Nations Rules for the Protection of Children Deprived of their Liberty UN General Assembly A/RES/45/113 of 14 December 1990, Article 11.

which clearly regulate the supervision mechanisms as well as complaint mechanisms available to juveniles, particularly in the institutions for enforcement of criminal sanctions.

This article is based on national research conducted in Serbia by authors in the name of Belgrade Child Rights Centre as a part of international project “Children’s Rights Behind Bars – Human Rights of Children Deprived of Liberty: Improving Monitoring Mechanisms” coordinated by DCI Belgium and Juvenile Justice Project coordinated by International Management Group.<sup>4</sup> The Serbian national research has attempted to assess the existence, efficiency and utility of both monitoring mechanisms of the conditions of children deprived of personal liberty and the complaint mechanisms available to them in the different types of facilities present in Serbia within the Juvenile Justice System. Methodology used on national research conducted in Serbia was mostly based on desk research that involved gathering and analysing of information and data relevant for the analysed subject. Gathering of data involved the following methods: overview and analysis of international policies and standards, overview and analysis of the contents of the relevant legislative framework, existing literature, reports, policies and statistical data combined with a field research based on individual interviews with professionals and juveniles. The interviews were conducted following a common questionnaire as a guideline suggested from DCI Belgium as a part of mentioned project but adapted to properly respond to the national requirements. Research was carried out from May 2014 to February 2016. Presented results from field research in this article are based on interviews with children, management and staff conducted in 2014 in the Juvenile Correctional Home in Kruševac and the the Juvenile Penitentiary (juvenile prison) in Valjevo.

## **2. The rights of the child and children deprived of their liberty in juvenile justice system**

The Convention on the Rights of the Child (CRC) guarantees every children deprived of liberty right to dignity and protection against torture or other cruel, inhuman or degrading treatment or punishment or unlawfully or arbitrarily arrest, detention or imprisonment.<sup>5</sup> Also, CRC guarantees children in detention all rights aside from rights to liberty as any other children living outside. CRC emphasises that that children should only be

<sup>4</sup> Children’s Rights Behind Bars - National Reports in <http://www.childrensrightsbehindbars.eu/outputs/national-reports>.

<sup>5</sup> Convention on the Rights of the Child General Assembly resolution 44/25 of 20 November 1989, Article 37.

detained as a measure of last resort and for the shortest appropriate period of time. Vulnerability of children deprived of liberty requires standards and broader safeguards for the prevention of torture and ill-treatment or violation of their rights based on efficient monitoring mechanisms. The UN Committee on the Rights of the Child declared in General Comment No. 10 that “Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities in a confidential setting.”<sup>6</sup> Importance of independent monitoring mechanisms is also recognized in the UN Rules for the Protection of Juveniles Deprived of their Liberty<sup>7</sup> (Havana Rules), the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)<sup>8</sup>, The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>9</sup>, the Standard Minimum Rules for the Treatment of Prisoners<sup>10</sup> and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>11</sup>. According to these standards, independent monitoring mechanisms should have the following characteristics and powers: 1. Independent (meaning not part of the administration of the detention facility) 2. Well qualified teams of inspectors that include medically trained inspectors as part of the team 3. Inclusion of women as part of inspection team particularly where detention facilities are being inspected which hold girls and women 4. Regular visits 5. Liberty to make unannounced visits 6. Access to all places under a state’s jurisdiction where children are deprived of their liberty 7. Access to all information and records about the treatment and conditions of detention 8. Access to conduct interviews with children in detention on a confidential basis 9. Liberty to choose which detention facilities they visit and which children to interview 10. Access to all employees of a detention facility where children are held 11. Reports of inspectors must be made available publicly 12. Systematic follow-up to reports 13. Ability to follow up

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<sup>6</sup> General Comment No. 10 on the Convention on the Rights of the Child UN Committee on the Rights of the Child CRC/C/GC/10 of 25 April 2007.

<sup>7</sup> United Nations Rules for the Protection of Children Deprived of their Liberty UN General Assembly (A/65/457) of 16 March 2011.

<sup>8</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (2010) (Bangkok Rules).

<sup>9</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment UN General Assembly resolution 39/46 of 10 December 1984 (CAT).

<sup>10</sup> The Standard Minimum Rules for the Treatment of Prisoners, The Economic and Social Council resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>11</sup> The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment UN General Assembly A/RES/43/173 of 9 December 1988.

allegations of abuse or violence<sup>12</sup>

There are several international human rights institutions that conduct monitoring visits to places of detention following-up on the conditions of detention and preventing torture and violations of other human rights such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>13</sup>, the Subcommittee on Prevention of Torture and Inhuman or Degrading Treatment or Punishment and The National Prevention Mechanisms<sup>14</sup>. The United Nations Commission on Human Rights, in resolution 1985/33, decided to appoint an expert, a special rapporteur, to examine questions relevant to torture. The mandate was extended for 3 years by Human Rights Council resolution 25/13 in March 2014. Also, the Committee on the rights of the Child, the Committee against Torture and the Human Rights Committee exercise monitoring through their reporting process especially when making concluding observations about the human rights of children deprived of liberty.

### **3. Legal and regulatory framework for children deprived of liberty in juvenile justice system in Serbia**

The Republic of Serbia is a signatory state to many documents on human rights and children rights. Serbia ratified the Convention on the Rights of the Child in 1990. Optional Protocol on the involvement of children in armed conflict and Optional Protocol on the sale of children, child prostitution and child pornography were ratified in 2002. Republic of Serbia is a signatory state to the Third Optional protocol on the communication procedure. Serbia is a State party to all the most important treaties concerning prohibition i.e. prevention of torture. International Covenant on Civil and Political Rights<sup>15</sup>, which in its Article 7 adopts a provision regarding prohibition of torture from the Article 5 of the Universal Declaration of Human Rights<sup>16</sup>, was ratified in 1971<sup>17</sup>. The Convention against Torture and Other Cruel, Inhuman or Degrading

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<sup>12</sup> Penal Reform International: Justice for Children Briefing No. 2 Independent monitoring mechanisms for children in detention in <http://www.penalreform.org/wp-content/uploads/2012/08/justice-for-children-briefing-2-v7-cmyk.pdf>

<sup>13</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment y General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987.

<sup>14</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006.

<sup>15</sup> Signed on 19th December 1966 in New York.

<sup>16</sup> Adopted by the United Nations General Assembly on 10th December 1948 in Paris.

<sup>17</sup> Official Gazette of the Socialist Federal Republic of Yugoslavia. No. 7/71.

Treatment or Punishment (Convention against Torture) was ratified in 1991<sup>18</sup>. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) had been signed on 25 September 2003, and ratified on 1 September 2005 by the Republic of Serbia<sup>19</sup>. By the Law on amending the Law on Ratification of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Serbia, adopted in 28<sup>th</sup> July 2011 it has been determined that the Ombudsman of the Republic of Serbia shall operate the National Preventive Mechanism against Torture.<sup>20</sup>

Serbia is Member State of the Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>21</sup> and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>22</sup> (European Convention for the Prevention of Torture - CPT) were ratified in 2003<sup>23</sup>. European Convention for the Prevention of Torture establishes a European Committee for the Prevention of Torture<sup>24</sup>.

In recent years, the Republic of Serbia has taken major steps to harmonize national legislation and to provide implementation of the rights on the children deprived of the liberty according to ratified conventions and also international standards incorporated in the UN Standard Minimum Rules for the Administration of Juvenile Justice from 1985 (The Beijing Rules), the and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and CPT standards.

The Constitution of the Republic of Serbia<sup>25</sup> guarantees human dignity, the sanctity of life and inviolability of physical and mental integrity, and explicitly prohibits illtreatment. The Constitution of the Republic of Serbia, Article 25 Paragraph 2 regulates that nobody can be subjected to torture, inhuman or degrading treatment or punishment. Prohibition of torture is foreseen by other legal regulation, among others by the Criminal

<sup>18</sup> Official Gazette of the Federal Republic of Yugoslavia – International treaties, No. 9/91.

<sup>19</sup> Official Gazette of Serbia and Montenegro – International treaties, No. 16/2005, modifications 2/2006.

<sup>20</sup> Article 2a of the Law on amending the Law on Ratification of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Serbia.

<sup>21</sup> Opened for signature on 4 November 1950 in Rome.

<sup>22</sup> Signed on 26 November 1987 in Strasbourg.

<sup>23</sup> Official Gazette of Serbia and Montenegro – International treaties, No. 9/2003, 5/2005 and 7/2005 – modified and Official Gazette of Serbia and Montenegro – International treaties, No. 9/2003)

<sup>24</sup> European Convention for the Prevention of Torture, Article 1.

<sup>25</sup> Official Gazette of the Republic of Serbia, No.98/200.

Procedure Code<sup>26</sup>, Law on Police<sup>27</sup> and Law on Execution of Criminal Sanctions<sup>28</sup>. Criminal Code<sup>29</sup> determinates torture and illtreatment as a separate offense.

The Law on the Execution of Criminal Sanctions regulates the status of prisoners and guarantee the respect for prisoners' dignity, protection of their fundamental rights in keeping with the Constitution and the tenets of international law, and ban torture and any form of discrimination. The Law lays down that the functioning of the Central Prison Administration and the entire penal system shall be open to public scrutiny and, in this context, domestic and international organizations and agencies concerned with human rights, the media and experts shall be entitled to visit the institutions accommodating the persons deprived of their liberty.

Law on Juvenile Justice (Law on juvenile criminal offenders and criminal protection of juveniles)<sup>30</sup> establishes legal framework for imposition criminal sanctions to juveniles in conflict with law. The Law was enacted in 2005 and it is based on concept of restorative justice and alternative sanctions.

The Law on Juvenile Justice proscribes criminal responsibility for juveniles who at the time of commission of the crime have attained 14 years of age and excludes enforcement of criminal sanctions as well as initiation of criminal proceedings against children, i.e. persons who have not yet attained 14 years of age. The Law makes a distinction between younger juvenile (person who at the time of commission of the criminal offense has attained 14 and is under 16 years of age) and elder juvenile (person who at the time of commission of the criminal offense has attained 16 and is under 18 years of age).

The Law specifies different types of criminal sanctions that may be pronounced to juvenile offenders, namely: educational measures, juvenile detention and security measures.

With regard to educational measures, the Law includes open protection measures<sup>31</sup> and close protection measures – institutional

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<sup>26</sup> Official Gazette of the Republic of Serbia, No. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14).

<sup>27</sup> Official Gazette of the Republic of Serbia, No. 101/2005, 63/2009 - Constitutional Court's decision and 92/2011.

<sup>28</sup> Official Gazette of the Republic of Serbia, No. 55/2014.

<sup>29</sup> Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005 - modification 107/2005 - modification 72/2009, 111/2009 and 121/2012.

<sup>30</sup> Official Gazette of the Republic of Serbia, No. 85/05.

<sup>31</sup> Open protection measures are: 1. Warning and guidance: court admonition and alternative sanctioning 2. Measure of increased supervision: increased supervision by parents, adoptive parent or guardian, increased supervision in foster family, increased supervision by guardianship authority, increased supervision with daily attendance in relevant rehabilitation and educational institution for juveniles.

measures. Close protection measures are: remand to educational institution<sup>32</sup>, remand to juvenile correctional home<sup>33</sup>, committal to special institution for treatment and acquiring of social skills<sup>34</sup>.

An elder juvenile (16-18 years of age) who committed a criminal offense punishable by imprisonment of over five years may be sentenced to juvenile prison if due to high degree of guilt an educational measure would not be appropriate. Juvenile detention may last from 6 months to five years, and juvenile detention of up to ten years may be pronounced for criminal offenses carrying a statutory punishment of twenty years imprisonment or more severe punishment or in case of joinder of at least two criminal offenses punishable by more than ten years imprisonment<sup>35</sup>.

Law on Juvenile Justice also regulates the measures of deprivation of liberty during criminal proceedings<sup>36</sup>. Exceptionally, the Juvenile judge may remand the juvenile to detention when grounds exist specified by law<sup>37</sup>.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has already twice implemented the programmes of periodic visits to Serbia in 2007 and 2011. When it comes to children deprived of liberty in the field of juvenile justice system, the CPT's delegation has during their visit in 2007 visited police stations in the Belgrade District Prison and made recommendations regarding the improvement of juveniles' rights in the pre-trial proceedings,

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<sup>32</sup> The juvenile is remanded to an educational institution for a minimum of six months and maximum of two years, and every six months the Court shall reconsider whether grounds for suspension of enforcement of this measure or its substitution with another educational measure exist. / Article 20 Law on Juvenile Justice.

<sup>33</sup> The juvenile shall remain in the correctional home for the minimum of six months and maximum of four years, and every six months the Court shall reconsider whether grounds for suspension of enforcement of this measure or its substitution with another educational measure exist / Article 21 Law on Juvenile Justice.

<sup>34</sup> The juvenile may remain in the institution for treatment and acquiring of social skills for a maximum of three years, and the Court shall reconsider the grounds for suspension of this measure or its substitution by another measure every six months / Article 23 Law on Juvenile Justice.

<sup>35</sup> Articles 28-30 Law on Juvenile Justice.

<sup>36</sup> Detention in preparatory proceeding on grounds of the detention order issued by the Juvenile judge may not exceed one month, and the juvenile Court bench of the same Court may, on justifiable grounds, extend detention for maximum one more month. Following conclusion of preparatory proceeding and from the moment of filing a motion for pronouncing of criminal sanction, detention of an elder juvenile may not exceed six months, and four months for a younger juvenile. From the moment of ordering an educational measure of remand to a juvenile correctional home, and pronouncing a juvenile prison sentence, detention of a juvenile may not exceed six months.

<sup>37</sup> Article 66 Law on Juvenile Justice.

as well as during the time they spend in detention centres<sup>38</sup>. The improvement of conditions in detention centres has also been recommended to Serbia by the Universal Periodical Review<sup>39</sup> mechanism, while the Committee on the Rights of the Child has in their Concluding Observation recommended to Serbia to develop alternatives to detention in order to reduce detention of juveniles in prisons in Serbia to a minimum<sup>40</sup>. However, during this visit the CPT's delegation has not visited any institutions for the enforcement of educational measures or juvenile prison sentence.

During the visit in 2011, the CPT's delegation had, besides visits to police stations and detention centres, also visited the Juvenile Penitentiary in Požarevac which runs juvenile detention for juvenile women, as well as the Juvenile Educational Institution in Niš which implements the educational measure of remand to educational institution. At the time of their visit to the Juvenile Penitentiary in Požarevac, there were no persons in the execution of juvenile detention. In relation to their visit to the Juvenile Educational Institution in Niš, CPT's delegation has suggested a number of different recommendations for the improvement of juveniles' rights in this institution. Particularly, the delegation recommended that the Serbian authorities ensure regular visits to this institution by bodies which are independent of the Ministry of Labour, Employment and Social Policy, i.e. the Ministry responsible for the work of this institution as an institution from the social protection system. Also, the CPT's delegation has recommended the improvement of the system of informing juveniles about their rights and obligations<sup>41</sup>.

#### **4. Detention facilities for children in juvenile justice system in Serbia**

In the Republic of Serbia there are different types of institutions accomodating children deprived of liberty, especially in the field of juvenile justice system, which enforce the educational measures, juvenile prison sentence and security measures ordered to juveniles.

There are three educational institutions on the territory of the

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<sup>38</sup> Council of Europe: Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf (2009) 1.

<sup>39</sup> Office for the High Commissioner for Human Rights: Universal Periodical Review Serbia A/HRC/WG.6/15/SRB/3.

<sup>40</sup> Committee on the Rights of the Child: Concluding Observation Republic of Serbia, CRC/C/SRB/CO/1, Para 73.

<sup>41</sup> Council of Europe: Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf (2012) 17.



Republic of Serbia which can accommodate juveniles who have been sentenced to educational measure of remand to educational institution in the criminal proceedings. These institutions are in the jurisdiction of the Ministry of Labour, Employment and Social Policy, and they are the following: Juvenile Educational Institution in Belgrade, Juvenile Educational Institution in Niš, Juvenile Educational Institution in Knjaževac. During 2013, in the Republic of Serbia the number of ordered measures of remand to educational institution was 79, while in 2014 the number of ordered measures was 56.<sup>42</sup>

The Juvenile Correctional Home is situated in Kruševac and this facility accommodates juveniles who have in the juvenile criminal proceedings been sentenced to educational measure of remand to a juvenile correctional home. This institution is in the jurisdiction of the Ministry of Justice of the Republic of Serbia. The institution is organized into several parts and forms of treatment – closed, semi-open and open department. The institution has the capacity to receive and accommodate about 400 juveniles. The average number of juveniles in this institution is 105. Although intended for minors, the vast majority of the population in the Educational- Correctional Institution in Kruševac are the persons of age (by two thirds) with a court sentence for a crime they had committed as minors. However, their stay at this institution poses a serious challenge both for the management and for those minors who are referred to the institution for minor offenses. All of this leads to the creation of serious informal groups.<sup>43</sup> According to the latest data provided by the Institution for execution of criminal sanctions, on February 2016 the total number of persons serving educational measures in the Juvenile Correctional Home in Kruševac amounted to 200 persons (190 males and 8 females).

The Juvenile Penitentiary in Valjevo (juvenile prison) is a facility specialized in enforcement of juvenile prison sentence. This facility is in the jurisdiction of the Ministry of Justice of the Republic of Serbia. The institution has the capacity of 250 persons, and on average this facility accommodates 160 convicts and 20 detainees. This facility accommodates juvenile males.<sup>44</sup> According to the latest data provided by the Institution for execution of criminal sanctions, on February 2016 the total number of persons serving juvenile prison sentence in the Juvenile Penitentiary in

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<sup>42</sup> Republic Institution for Social Welfare, „Children in the Social Welfare System“, Belgrade 2013, 42.

<sup>43</sup> Helsinki Committee For Human Rights in Serbia, „Monitoring of the Prison System Reform, Prison System in Serbia 2011“, Belgrade 2011.

<sup>44</sup> Ministry of Justice of the Republic of Serbia, Directorate for the Execution of Criminal Sanctions, „Annual Report on the work of the Directorate for the Execution of Criminal Sanctions for 2012“, Belgrade 2014, 34.

Valjevo amounted to 20. In 2015, this facility accommodated 20 persons serving juvenile prison sentence. Juvenile females who have been sentenced to juvenile detention are placed in the Penitentiary for Women in Požarevac, as the only institution for the enforcement of criminal sanctions in the Republic of Serbia for the remand of women sentenced to prison. At this moment, there are no persons serving juvenile detention in this facility.

Juvenile detention is implemented in the detention units. Detentions units are organised within the district prisons and penitentiary units in Serbia (26 of units). Conditions in these facilities are not adapted to the juveniles and therefore are not in accordance with international standards either. According to the statistics of the Ministry of Justice of the Republic of Serbia, Directorate for the Execution of Criminal Sanctions, 15 juveniles were found in detention on the day on 1<sup>st</sup> January 2014.<sup>45</sup>

During detention, psycho-social and educative support is not available for the juveniles so stay in custody is considered as the most risky period for the juveniles.

## **5. Monitoring mechanisms in juvenile justice places in Serbia where children are deprived of their liberty**

### **5.1. National preventive mechanism (NPM) under OPCAT**

By the Law on Ratification of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Serbia a National Preventive Mechanism against Torture has been established which is responsible to perform continuous monitoring in all facilities where there are persons deprived of liberty, above all police stations, prisons and juvenile correctional homes, stationary social protection institutions, psychiatric hospitals, asylums, and with an objective to prevent torture and other cruel, inhuman or degrading treatment or punishment. The National Preventive Mechanism against Torture is responsible for monitoring all institutions in Serbia where there are children deprived of liberty. Under the Law amending the Law on the Ratification of the Optional Protocol, adopted on 28 July 2011 at the sitting of the Republic of Serbia National Assembly, the Protector of Citizens was designated as the authority performing the duties of the NPM.

The Model of the NPM in the Republic of Serbia is defined by the relevant law. It stipulates that the Protector of Citizens shall carry out the duties of the NPM in collaboration with the Ombudsmen of the

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<sup>45</sup> *Ibid.*, 36

autonomous provinces and the associations whose statute intended goal is the promotion and protection of human rights and freedoms<sup>46</sup>.

Preventive Mechanism is entitled to: 1. Unimpeded and unannounced visits to institutions 2. Unrestricted access to all institutional premises 3. Unrestricted and unsupervised interview with all persons deprived of liberty 4. Unrestricted and unsupervised interview with the personnel 5. Unrestricted access to all records, regardless of degree of confidentiality 6. Unrestricted copying of documentation, regardless of degree of confidentiality. Main goals of visits to institutions are: 1. Determining the real situation (establishing reliable, clear, precise and comparative facts suitable for analysis) 2. Identifying irregularities in work, that is, identifying violations of rights of persons deprived of liberty 3. Recommending measures for elimination of work irregularities 4. Control of the change of situation and implementation of measures for elimination of work irregularities.

In the process of preparation of monitoring of places of detention of persons deprived of liberty, the first step is to identify the priority visits according to the type of institutions and their situations and on the basis of the findings prepare the plan of visits to institutions (hereinafter: Plan of visit). The following types of visits exist: regular, control and emergency. Regular visits are periodic visits carried out with the view of systematic control of situation in institutions in relation to the respect of rights of persons deprived of liberty. Regular visits are planned ahead and carried out according to the designed plan of visit. Regular visits are announced. Control visits are those carried out in order to check the situation in institutions in relation to the respect of persons deprived of liberty and compare it to the situation identified in the course of previous visit. Control visit are planned ahead and carried out according to the designed plan of visit. Control visits are, as a rule, announced. Emergency visits are visits carried out in case of learning of the existence of serious irregularities related to the respect of rights of persons deprived of liberty. A decision to carry out an emergency visit is made by the coordinator. Emergency visits are not foreseen by the plan of visit. Emergency visits are, as a rule, unannounced.

## **5.2. Juvenile Judge and Juvenile Public Prosecutor**

In addition to the National Preventive Mechanism against Torture, and in relation to children deprived of liberty within juvenile justice

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<sup>46</sup> Law on Ratification of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Republic of Serbia a National Preventive Mechanism against Torture.

system, the supervision over enforcement and inspection of enforcement of educational measure is exercised by the Juvenile judge of the Court adjudicating in the first instance<sup>47</sup>. The Juvenile judge and Juvenile Public Prosecutor shall at least once a year undertake direct supervision and inspection of enforcement of educational measures<sup>48</sup>. Furthermore, the Juvenile judge of the Court adjudicating in the first instance and the competent Juvenile Public Prosecutor shall at least twice a year visit the juvenile remanded in a facility or institution for enforcement of educational measures where, in direct contact with the juvenile and the professionals engaged in enforcement of the educational measure and through inspection of relevant documents, they shall determine the lawfulness and correctness of treatment and evaluate the achievement in educational and proper growth of the juveniles' personality, as well as by direct inspection and review of the reports on the progress of the enforcement of the pronounced educational measure. In case they notice any irregularities they shall promptly notify the bodies and institutions in charge of supervision and enforcement of educational measures<sup>49</sup>, as well as the facility, i.e. institution where the educational measure is enforced. Following notification of the Juvenile judge and/or the Juvenile Public Prosecutor the bodies and institutions in charge of professional supervision as well as the management of the institution or facility where the educational measure is served, shall promptly institute relevant investigations and undertake measures to rectify the unlawfulness and irregularities and shall accordingly inform the Juvenile judge, and the Juvenile Public Prosecutor<sup>50</sup>.

The results of the field research indicate that the professionals in institutions are satisfied with the method of the realization of inspection visits by courts. These visits usually last one day during which the judge and the public prosecutor undertake direct supervision, conduct interviews with employees in the institutions as well as the juveniles and perform inspections of the relevant documents, after which they have a meeting with the employees where they discuss potential needs for improvement. The results of the research show that a regular contact with the juvenile judges is of great importance. However, the results also indicate that there is an inconsistent practice in the enforcement of supervision and inspection of the educational measures by different courts. A number of courts act in accordance with the legal obligations and make visits regularly, every six

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<sup>47</sup> Article 99 Law on Juvenile Justice.

<sup>48</sup> Article 100 Law on Juvenile Justice.

<sup>49</sup> Ministry of Justice of the Republic of Serbia, Directorate for the Execution of Criminal Sanctions and Ombudsman of the Republic of Serbia.

<sup>50</sup> Article 115 Law on Juvenile Justice.

months, while other courts, especially from economically less developed areas do not make the supervisory visits at all or do so very rarely.

### **5.3. Directorate for Execution of Criminal Sanctions**

The Directorate for Execution of Criminal Sanctions shall organize, implement and oversee the execution of juvenile detention as well as the educational measure of remand to juvenile correctional home<sup>51</sup>. The Directorate is an authority attached to the Ministry of Justice of the Republic of Serbia.

The results of the field research indicate that this type of supervision regarding both enforcement of juvenile prison sentence and educational measure of remand to juvenile correctional home is performed regularly. This type of supervision lasts for several days during which professionals undertake direct supervision over the respect of the rights of persons serving criminal sanctions, such as the right to humane treatment, visits, telephone contacts, correspondence, receiving parcels, food, hygiene, health care, legal assistance, education, religious rights etc. the supervision includes inspection of documents, direct supervision, conducting interviews with the employees in the institutions and persons serving educational measure or juvenile prison sentence. After the supervision has been completed, the Directorate for Execution of Criminal Sanctions shall issue a Measure Order and set a deadline for the institution to follow the order and correct the determined irregularities. After six months have passed, the Directorate for the Execution of Criminal Sanctions shall perform inspection in order to determine whether the institution has followed the order. The results of the field research show that the professionals in institutions are satisfied with the method of the realization of inspection visits by the Directorate for Execution of Criminal Sanctions.

### **5.4. Other institutions**

Supervision over the enforcement of criminal sanctions are also exercised by other independent bodies, particularly non-governmental organizations that have established cooperation with the National Preventive Mechanism against Torture such as Helsinki Human Rights Committee in Serbia, Belgrade Center for Human Rights, Dialogue and the Committee for Human Rights – Valjevo, MDRI-S, IAN, the Victimology Society of Serbia and other non-governmental organizations within their own activities. Non-governmental organizations publish the results of the

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<sup>51</sup> Article 12 Law on Execution of Criminal Sanctions.

performed inspections in their reports.

Ombudsman as an independent body with the authority to control the work of the authorities and protect human rights also regularly acts on citizens' complaints and acts in accordance with his/her powers in order to protect the rights of persons serving criminal sanctions in the Republic of Serbia. The results of the field research indicate that the visits by the Ombudsman are relatively frequent and that the supervision by this body is undertaken regularly. The Commissioner for Information of Public Importance and Personal Data Protection is also authorized to perform supervision within his/her powers in order to protect personal data.

Despite a solid legislative framework in relation to the supervision mechanisms, previous reports show a variety of problems in the implementation of supervision in practice. Thus, for example, the Report by Helsinki Committee for Human Rights indicates the problem arising from the fact that supervisory bodies spend insufficient time in their visits, particularly judges in institutions, as well as the problem of a lack of specific knowledge of professionals for evaluating all aspects significant for exercising rights of children deprived of liberty in the institutions during inspection visits<sup>52</sup>.

The results of the field research also point to the need for improving the knowledge and capacity of professionals performing supervision in order to adequately evaluate all aspects significant for the determination of exercising the rights of children deprived of liberty in institutions during supervisory visits. The professionals in institutions find that sometimes the supervision is provided by persons who lack sufficient experience in the field of supervision or who lack experience in the work in institutions for enforcement of criminal sanctions, while they are also insufficiently informed about the particularities of the work of certain institutions for the enforcement of criminal sanctions. Moreover, the respondents believe that it is necessary to work on improvement of the knowledge and capacities of a number of professionals performing supervision regarding skills of conducting interviews with employees and minors, as well as skills of giving feedback and developing and strengthening collaborative relationships.

Results of the research indicate that the professionals in institutions for enforcement of criminal sanctions understand the significance of performing supervision. Mostly, they see supervision as support for further improvements of work. However, a number of professionals pointed out that supervision is sometimes perceived as "spotting errors" and pressures, especially if it is performed by inexperienced persons who do not possess

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<sup>52</sup>Helsinki Committee for Human Rights in Serbia: *Monitoring of the Prison System Reform, Prison System in Serbia in 2011*.

adequate communication skills but instead behave arrogantly.

Supervision of respecting the rights of children deprived of liberty in the social protection institutions is carried out by the Ministry of Labour, Employment and Social Policy (professional and inspection supervision). On the basis of the minutes establishing certain irregularities, the social protection inspector reaches a decision ordering measures or imposing prohibitions and setting deadlines for enforcement of the measures and prohibitions ordered to the social protection institution.<sup>53</sup> In the field of juvenile justice, this type of supervision is relevant for institutions where the educational measure of remand to educational institution is enforced, having in mind that these institutions are in the jurisdiction of the Ministry of Labour, Employment and Social Policy.

Supervision of respecting the rights of children deprived of liberty in the social protection institutions is also performed by the Ministry of Health (supervision over the legality of work of health care facilities and private practice as well as inspection supervision). The supervision shall be exercised by the Ministry of Health through health inspectors and inspectors in charge of the area of drugs and Medical devices. The health inspector, on the basis of the minutes establishing certain irregularities, shall hand down the decision ordering the measures, imposing prohibitions and setting deadlines for implementation of the measures ordered to health care facility or private practice.<sup>54</sup> In the field of juvenile justice, this type of supervision can be relevant for institutions which enforce security measure of mandatory psychiatric treatment and confinement in a health care institution, compulsory alcohol addiction treatment and compulsory drug addiction treatment.

By the new Law on Execution of Criminal Sanctions<sup>55</sup>, a new institution has been established – judge executive responsible for protecting the rights of persons serving criminal sanctions, as well as detainees. Proceedings before the judge executive is initiated upon the request for the protection of courts or upon appeal by the detainee, and in the second instance the judge executive rules against the decision of the superintendent of the Institution or the Head of Management within three days from the announcement of the decision. Convicted person or detainee has the right to file an appeal to the judge executive within three months from the occurrence of the violation of rights, and exceptionally within six months if there was an objective impediment<sup>56</sup>.

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<sup>53</sup> Articles 166-173 Law on Social Welfare.

<sup>54</sup> Law on Health care, Articles 243, 248.

<sup>55</sup> RS Official Gazette, No. 55/2014.

<sup>56</sup> Article 33-37 Law on Execution of Criminal Sanctions .

## 6. Conclusions

In recent years, the Republic of Serbia has taken major steps to harmonize national legislation and to provide implementation of the rights on the children deprived of the liberty according to ratified conventions and international standards. Serbian legislation contains a number of statutory provisions which clearly regulate the supervision mechanisms as well as complaint mechanisms available to juveniles, particularly in the institutions for enforcement of criminal sanctions. The supervisory visits by the international and national authorities are usually carried out regularly, and the employees in the institutions are mostly aware of the significance of these visits to the improvement of their work. In the Republic of Serbia there are several national monitoring mechanisms / bodies, and in relation to the institutions in the field of juvenile justice system, the supervision by the following institutions is especially relevant: NPM, Directorate for the Execution of Criminal Sanctions, Juvenile judge and Juvenile prosecutors, Ombudsman and non-governmental organizations. The visits by these bodies present a crucial link for further improvement of rights and protection of juveniles in the institutions for enforcement of criminal sanctions, as well as for further improvement of the work of professionals employed in these institutions.

In spite of solid legislation, the implementation of supervisory visits in practice has shown that it is necessary to further work on strengthening of the supervision mechanisms especially in the field of further improvement of the capacities of the professionals engaged in supervision so that they could be able to detect all aspects significant for the assessment of the degree of exercising of rights as well as to undertake supervision in a professional and efficient way. In particular, there is the need to strengthen the capacities of professionals performing supervision for improvement of skills of interviewing employees in the institutions and juveniles, as well as skills of active listening and providing feedback. Furthermore, it is necessary to simultaneously work on the improvement of knowledge of professionals employed in the institutions where the supervision is performed about the significance of supervision for further improvement of work as well as further respect and protection of rights of juveniles. At the same time, it is important to work on further improvement of the supervision and establishment of regular supervisions by those bodies that have not yet been able to perform supervision regularly even though they have the legal possibility or those bodies that did not undertake supervision regularly in the legally defined deadlines.



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## **NADZORNI MEHANIZMI U INSTITUCIJAMA U KOJIMA SE NALAZE DECA LIŠENA SLOBODE U SISTEMU MALOLETNIČKOG PRAVOSUĐA**

### Rezime

Ovaj članak je zasnovan na nacionalnom istraživanju koje je sprovedeno u Srbiji od strane autora u ime Centra za prava deteta u Beogradu, a u okviru međunarodnog projekta „Prava dece iza rešetaka - ljudska prava dece lišene slobode: Unapređenje nadzornih mehanizama” koordinisanog od strane DCI Belgija i projekta “Maloletničko pravosuđe” koordinisanog od strane International Management Group. Namera članka je da predstavi na koji način se nadzire poštovanje prava dece lišene slobode u institucijama za izvršenje krivičnih sankcija u sistemu maloletničkog pravosuđa u Srbiji i na koji način deca mogu da ostvare svoje prava u slučaju njihovog kršenja.

**Ključne reči:** prava deteta, lišenje slobode, nadzorni mehanizmi.