



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

Distr.  
GENERAL

CAT/C/21/Add.6  
29 July 2005

Original: ENGLISH

---

COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Initial reports of States parties due in 1993**

**Addendum**

**BOSNIA AND HERZEGOVINA\***

[4 October 2004]

---

\* The present report has not been edited before being submitted for translation.

**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
Institutions of Bosnia and Herzegovina which participated in the preparation of the Report .....	1 - 9	6
Bosnia and Herzegovina within the period from 1992 to 1995 .....	10 - 19	7
Introductory remarks .....	20 - 82	9
Camp prisoners population in Bosnia and Herzegovina .....	31 - 36	10
Illegal places of imprisonment (camps) .....	37 - 41	11
Methods of torturing the camp prisoners .....	42 - 47	11
Post-war status and problems of camp prisoners .....	48 - 59	12
Social-economic consequences .....	60 - 70	14
The women association “Medica” .....	71	16
Medica nowadays .....	72 - 73	16
The stated data to the area of Zenica and Visoko .....	74 - 82	16
Introduction .....	83 - 91	18
Article 1 .....	92 - 131	20
Article 2 .....	132 - 194	25
Article 3 .....	195 - 261	34
Article 4 .....	262 - 287	45
Article 5 .....	288 - 311	50
Article 6 .....	312 - 341	53
Article 7 .....	342 - 349	58
Article 8 .....	350 - 355	59
Article 9 .....	356 - 364	60
Article 10 .....	365 - 407	61

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
Article 11 .....	408 - 538	68
Article 12 .....	539 - 543	93
Article 13 .....	544 - 585	94
Article 14 .....	586 - 600	100
Article 15 .....	601 - 607	102
Article 16 .....	608 - 637	103
Appendix of the Ministry of Health and Social Welfare of Republica Srpska .....	1 - 45	109
Date referring to the department of forensic psychiatry in Sokolac and Institution "Jake" Modria .....	46 - 58	115
The Institution for female children and youth from Vieggrad with temporary accommodation at the Institution "Jake" .....	59 - 69	118
Tables 1 to 16 .....		120
Appendix 1 .....		130
Appendix 2 .....		131

**List of acronyms used in the report**

BiH	Bosnia and Herzegovina
FBiH	Federation of Bosnia and Herzegovina
RS	Republic of Srpska
MKCK	International Committee of the Red Cross
IRCT	International Rehabilitation Council for Torture Victims, Copenhagen
UNPROFOR	United Nations Protection Force
UNHCR	United Nations High Commissioner for Refugees
OSCE	Organization for Security and Cooperation in Europe
CTV	Centre for Torture Victims
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
KZ RS	Penal Code of the Republic of Srpska
KZ BiH	Penal Code of Bosnia and Herzegovina
KZ FBiH	Penal Code of the Federation of Bosnia and Herzegovina
KPZ	Corrective Institution
KPU	Penal Institution
DGS BiH	State Border Service of Bosnia and Herzegovina
MUP RS	Ministry of Interior of the Republic of Srpska
MUP FBiH	Ministry of Interior of the Federation of Bosnia and Herzegovina
ZKP BiH	Penal Procedure Code of Bosnia and Herzegovina
ZKP RS	Penal Procedure Code of the Republic of Srpska
ZKP FBiH	Penal Procedure Code of the Federation of Bosnia and Herzegovina
SiCG	Serbia and Montenegro
IPTF	International Police Task Force
IOM	International Organization for Migration

CPCJD/DDSMS	UN Crime Prevention and Criminal Justice Division/UN Department for Development Support and Management Services
KM	BiH Convertible Mark
ZIKIPS	Law on Execution of Penal and Offence Sanctions
OHR	Office of the High Representative
TBC	Tuberculosis
AIDS	Acquired Immune Deficiency Syndrome
ZIKS	Law on Execution of Penal Sanctions
KPD	Hospital for execution of measures of obligatory psychiatric treatment and accommodation in medical institutions
CRT	Legal standards on accommodation capacities in corrective institutions
OZ	District court
EZP	European Detention Standards
VPD	Correction Home
CJS	Public Security Centre
EUPM	European Union Police Mission in Bosnia and Herzegovina
CH	Sign of application lodged with Human Rights Chamber
NN	Person of unknown identity
UNMIBH	United Nations Mission in Bosnia and Herzegovina
K/Ž	Canton
WHO	World Health Organization
JU	Public institution
MZ	Local community
NPS	Neuropsychiatrist

**Institutions of Bosnia and Herzegovina which participated  
in the preparation of the Report**

1. The Convention against Torture and Other Cruel, Inhuman and Degrading Punishment or Treatment was adopted by the General Assembly of UN by its Resolution 39/46 dated 10th December 1984. The Convention entered into force on 27th June 1987 after it had been ratified or conjoined by 20 states, according to the requirements stated under the Article 27 (1).
2. Bosnia and Herzegovina conjoined this Convention on 6th March 1992.
3. According to the Article 19 of the Convention against Torture and Other Cruel, Inhuman and Degrading Punishment or Treatment (UN 1984) hereby, Bosnia and Herzegovina submits its consolidated initial report to the UN Committee against Torture, on the basis of the undertaken international obligation of Bosnia and Herzegovina regarding submission of reports.
4. Considering the complexity of the governmental structure of Bosnia and Herzegovina presented in the CORE Document, the following institutions took part in preparation of the Initial Report of Bosnia and Herzegovina regarding implementation of the regulations of the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment: the institutions of Bosnia and Herzegovina, Federation of B&H, Republika Srpska and District of Brčko.
5. Within the scope of their competence the following institutions of Bosnia and Herzegovina took part in preparation of this report: Ministry of Justice of B&H, Ministry of National Security of B&H, the State Border Service and the Ministry of Human Rights and Refugees.
6. The institutions from District of Brčko that took part in preparation of the report were: the Government and the Police of District of Brčko.
7. The entity institutions that took part in preparation of the report were: Ministry of Justice and Ministry of Interior of Republika Srpska and Federation of B&H, Ministry of Health of Federation of B&H and Ministry of Health and Social Welfare of Republika Srpska.
8. All mentioned ministries that took part in preparation of the First Initial Report of Bosnia and Herzegovina are the portfolio ministries at the level of the state or entities within whose portfolio are the issues stated in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment. The NGOs in Bosnia and Herzegovina also took part in preparation of this Report.
9. This Report covers the period from 1992, when Bosnia and Herzegovina conjoined the Convention, to 30th June 2003.

### **Bosnia and Herzegovina within the period from 1992 to 1995**

10. The tragic conflict in the region that started in April 1992, as the war happenings have been defined in the Constitution of Bosnia and Herzegovina, has left enormous consequences to demographic picture of Bosnia and Herzegovina: about 250.000 persons were killed and about 20.000 are considered disappeared.

11. Bosnia and Herzegovina was internationally recognised on 6 April 1992. It gained its legal status of the independent state within the existing administrative borders that are now recognised.

12. The towns, urban settlements, villages, rural settlements, monuments, monument complexes, social standard facilities, business premises, religious infrastructure facilities and devices, roads and parks, production estate and others were destroyed in this conflict. Of the total number of the inhabitants, 80% lived on humanitarian aid. During the war activities more than 1/3 of the total residential fund was destroyed in Bosnia and Herzegovina, of which 18% of the residential units was completely destroyed. The forest resources were also heavily devastated in Bosnia and Herzegovina, by illegal cutting, burning and usurping of the forest areas. The health institutions, too, were damaged in the amount of 24% of the previous capacity, while the percentage of the damage on the previous health institutions was over 40%.

13. One of the worst war consequences for Bosnia and Herzegovina is the presence of about 2 million of the remaining land mines and about 3 million of other unexploded ordinance that have not yet been removed. All these war happenings resulted in numerous examples and forms of torture, inhuman or degrading treatment or punishment that manifested as defined by the Convention, such as: inflicting the pain, severe physical and mental anguish in the worst forms. The victims of direct or indirect forms of war torture that still request satisfaction for the suffered pain and anguish could be classified into two groups, such as:

(a) All the civilian population inhabiting Bosnia and Herzegovina at the time of the beginning of the war and during the war happenings, as well as in the period after the cease of the war conflict;

(b) Category of the population as the victims of the most cruel form of torture such as: persons who were arrested with use of force and inhuman treatment, and were put into the war camps, the persons who were ethnic minority in the certain areas during the war, children of all ages as the most vulnerable category with permanent consequences of the war happenings manifested in the form of physical or mental handicap, women as the victims of sexual abuse, the soldiers of the military forces with permanent consequences of the post-war syndrome etc.

14. When we take into consideration all the mentioned categories, we come to the conclusion that it is hard to separate some category of the population that, during the tragic conflicts within the period 1992-1995, was directly or indirectly exposed to torture with smaller or greater war or the post-war consequences.

15. The efforts of the international community to stop the war in Bosnia and Herzegovina, resulted in concluding the General Framework Agreement for Peace in Bosnia and Herzegovina (initially signed on 21st November in Dayton) and officially signed on 14th December 1995 in Paris.

16. Besides stopping the war, this peace agreement also stipulates the relations in the state of Bosnia and Herzegovina. According to the provisions of this peace agreement, especially Annex IV of the Constitution of Bosnia and Herzegovina, Bosnia and Herzegovina continues to exist as the independent state, and the territory of Bosnia and Herzegovina consists of two entities: Federation of Bosnia and Herzegovina and Republika Srpska. By the subsequent decision of the Arbitration Commission the separate administrative unit has been established - District of Brčko of Bosnia and Herzegovina. This agreement also stipulates the responsibilities of the central government and the governments of the entities. The capital remains to be the City of Sarajevo, and the official languages are: Bosnian, Croatian and Serbian language.

17. The review of the war period 1992-1995 is important because, according to the Article 19 of the Convention, within the period of one year from the date when the Convention entered into force, Bosnia and Herzegovina was obliged to submit the report to the UN Committee against Torture, about the measures that have been taken to comply with the obligations undertaken by Bosnia and Herzegovina at the moment of signing the Convention. As Bosnia and Herzegovina faced the conditions of complete disaster in the conflict of several opposed sides with diametrically different interests during the war conflict and considering the started procedure to determine the chain of command and personal responsibility for the acts committed during the war, it was not possible to make this report give more realistic presentation of the conditions and forms of torture in the war period.

18. Non-governmental organisations that, together with the governmental sector, took part in preparation of this First Initial Report, and considering that they, in the first place, deal with torture and its consequences, have submitted their written reviews as to the forms of torture, inhuman and degrading treatment and punishment for the period 1992-2003 and these reviews make the integral part of this report.

19. Non-governmental organisations that have largely contributed this report by their separate reports, in making out this First Initial Report of Bosnia and Herzegovina against torture, are:

- (a) The Association for Rehabilitation of the Victims of Torture - The Centre for Victims of Torture Sarajevo;
- (b) The Women Association "Medica" Zenica;
- (c) The Union of Camp Prisoners of Republika Srpska;
- (d) The Union of Camp Prisoners of Bosnia and Herzegovina;
- (e) The Croatian Association of Camp Prisoners and Victims of the War Mostar;



(f) The joint appendix of the Union of Camp Prisoners of Bosnia and Herzegovina, Union of Camp Prisoners of Republika Srpska, and Croatian Association of Camp Prisoners and Victims of the War.

### **Introductory remarks**

20. The contents of the Report refer, to a certain extent, to all the camp prisoners in Bosnia and Herzegovina, and all the associations (organisations) in Bosnia and Herzegovina consider it their own report.

21. The Union of Camp Prisoners of Bosnia and Herzegovina was founded on 25 August 1996, and it is a non-governmental, non-partisan and multi-ethnic association of citizens of Bosnia and Herzegovina, of the survived camp prisoners and members of the families of the killed and disappeared camp prisoners.

22. The Union consists of the camp prisoners organised in their home associations (municipal, town or other associations in RS and abroad), who, by association into the Union of the Camp Prisoners in the cantons of F Bosnia and Herzegovina, Regional Associations of Camp prisoners in RS and the Union of the associations abroad, freely and upon their will joined the Union in order to exercise the rights and interests of their members in the field of legal, social and health care.

23. The status of the camp prisoner belongs to any person, a citizen of Bosnia and Herzegovina and the foreign citizen who, during the war in Bosnia and Herzegovina, was forcibly taken away or interned to certain places of imprisonment or concentration camps in and out of the borders of Bosnia and Herzegovina by the soldiers of the military and paramilitary formations that acted in the territory of Bosnia and Herzegovina within the period from 1992 to 1995, and who was deprived of the elementary human rights guaranteed by the Universal Declaration on Human Rights and the Convention on Preventing and Punishing the Crime and Genocide.

24. The status of the camp prisoner is stipulated at the level of the Union of the Camp Prisoners of Bosnia and Herzegovina with the previous procedure in the home association of the camp prisoners, according to the Bylaws on Determining the Status of the Camp Prisoner, passed by the Assembly of the Union.

25. Realistic are the assumptions that, during the tragic war conflict in Bosnia and Herzegovina, 1992-1995, over 200.000 civilians survived and 30.000 camp prisoners were killed or considered disappeared in the outrageous violence in the camps and prisons all over Bosnia and Herzegovina.

26. The Union of the Camp Prisoners of Republika Srpska was founded on 20th December 2002 and has over 55.000 members. The Union is organised as the municipal and regional union and covers the entire territory of Republika Srpska. It has the Assembly and the Presidency with 15 members. It is registered at the Basic Court in Banja Luka.

27. The Croatian Association of Camp Prisoners of the War was founded in 1998 and is registered at the Federal Ministry of Justice in Sarajevo. It gathers over 50.000 camp prisoners - former prisoners of numerous camps (more than a hundred) all over Bosnia and Herzegovina, the Republic of Croatia, Serbia and Monte Negro. The main office of the Association is in Mostar.

28. Three mentioned organisations of the camp prisoners in Bosnia and Herzegovina agree that the word "camp prisoner" mentioned in this text hereinafter refers to all the camp prisoners in Bosnia and Herzegovina: Bosniacs, Serbs, Croats and others.

29. The report refers to the time starting from the date of international recognition of Bosnia and Herzegovina until the deadline for submission of the report.

30. The camp prisoners are the most typical victims of torture in the recent war, so, according to the Convention against Torture (Articles 1, 2, 3, 4, 10 and 16) and other conventions, there are all the prerequisites to incorporate the report of the camp prisoners into the First Initial Report of Bosnia and Herzegovina, as its integral part, because, according to the stated conventions there was the obligation to protect all the categories of citizens, and especially the camp prisoners.

### **Camp prisoners population in Bosnia and Herzegovina**

31. According to the so far gained knowledge, about 250.000 persons, mostly civilians, went through the numerous camps in Bosnia and Herzegovina since the beginning of the war. Unfortunately, 39.000 persons did not survive the camps or are considered disappeared. The realistic data and indices are still incomplete, because the process of registering and membership enrolment of the camp prisoners is still under way and will last for a long period in future due to the fact that this population is dispersed and displaced.

32. However, even these, so far collected realistic indices about the number of camp prisoners, can serve as the realistic data base and the basis for the contents of this report.

33. The camp prisoners were mostly the civilians who happened to be in the certain territory where the predominant role was played by one of the sides in the conflict. Illegal and groundless mass arrests and taking into imprisonment were motivated by the political, ethnic, religious, territorial, property and other aspects and objectives.

34. The category of camp prisoners includes children, women and men of all ages, from the newly born infants to the old men of over 80 years of age.

35. Among the camp prisoners there were, also, the prisoners from the military and paramilitary formations, political and party officials and activists, but they all had the same treatment and ended as the camp prisoners.

36. The time spent in one or more camps is measured from one day to several years, even to the time after the end of the war. The average time spent in the camps is hard to express even approximately, but the estimations show that the average time amounts to at least 5 months.

**Illegal places of imprisonment (camps)**

37. Different are the sources and the data about the number of camps but it is certain that there were several hundreds of them in the territory of Bosnia and Herzegovina and they occurred and were made as the strategy or the consequence of the war.
38. According to the data of the International Committee of Red Cross (ICRC) in Bosnia and Herzegovina, in the period 1992-1996, 360 places of imprisonment were registered all over Bosnia and Herzegovina. Further proving and registering of existence of the camps in the territory of entire Bosnia and Herzegovina is still under way.
39. The places used as the places of imprisonment and camps were:
- Military facilities: barracks, warehouses, military testing grounds, hangars and others, schools, gymnasiums, sports facilities, tunnels, basements, sheds, garages, underground facilities, wheat silos and other rooms, religious and all other facilities that could accommodate a certain number of prisoners.
40. All these facilities, in principle, were extremely inappropriate to satisfy the minimum of human biological needs.
41. The conditions and the entire living regime in the camps were below any human minimum and dignity and had no elementary living conditions whatsoever. Besides, all so far known and even new forms of torture were continually practised, so it is simply hard to understand how anyone could biologically survive under such conditions.

**Methods of torturing the camp prisoners**

42. Torture is one of the worst crimes and violation of human rights. It is the attack against the essence of human personality and dignity. It makes the victim be the ordinary weapon in the hands of the perpetrator, but, at the same time, it also deprives the torturer of any humanity.
43. Such torture in different forms and modalities were committed by the official persons in the camps and other places of imprisonment.
44. The camp prisoners in Bosnia and Herzegovina are encouraged by the fact that they can freely present and confirm the truth about the real victims of torture that the camp prisoners suffered while staying in the camps during the war.
45. Thus, during their stay in the camps, the camp prisoners were exposed to all so far known and new methods of torture and cruel deprivation of all human rights in all three basic modes of torture: psychological, physical and sexual torture (single or multiple).
46. As the attachment to this report there will be submitted the list of 82 methods and forms of torture that have been registered so far.
47. Besides this list, there is a number of testimonies of the survivors about the rape of women and men. These testimonies have been published in the media, books such as "I Begged Them to Kill Me" and other documents.

### **Post-war status and problems of camp prisoners**

48. Within the post-war period there has not been the law in Bosnia and Herzegovina that comprises or under which this category of the citizens can be assigned.

49. A great number of camp prisoners still have a problem of unresolved basic existential issues such as: employment, housing, social and health care, schooling of the children, sustainable return etc. The international institutions that dealt with the problems of camp prisoners in the war and the post-war period in Bosnia and Herzegovina were UNPROFOR, Mission of European Monitors, UNHCR, OSCE and others.

50. Due to the needs of the population of the survivors of torture, the International Council for Rehabilitation of the Victims of Torture - IRCT founded the Centre for the Victims of Torture in 1997, and it is financed by the European Commission - The Office for Democratisation and Human Rights.

51. The Centre provides the specialised multi-disciplinary treatment for the survivors of torture and their families. At the same time the scientific research programme is being implemented and it provides documents on the social-demographic data, physical and psychological and social consequences of torture as well as evaluation and the effect of the rehabilitation treatment.

52. As the result of the activities of the Centre, from 1997 to 2002, there was a published book "Treatment of the Survivors of Torture and Trauma in the Post-war Society". The authors are the members of the team of the Centre with the editor-in-chief, who is the research co-ordinator of the Centre for Victims of Torture, the professor of psychology L.T. Arcel, the associate of IRCT Copenhagen.

53. So far, the Centre has admitted about 1000 clients - the direct victims of torture and a certain number of the members of the families - as the indirect victims.

54. The Centre for Victims of Torture has presented the period 1992-1995 (the period of the tragic conflict) in the following manner.

55. During the war in Bosnia and Herzegovina, from 1992 to 1995, massive torture was inflicted mostly on the civilian population, within the strategy and war objectives.

56. The characteristics of the torture during the war 1992-1995 in Bosnia and Herzegovina:

(a) Torture in Bosnia and Herzegovina falls into the group of torture inflicted in the military conflicts and committed by the military, paramilitary personnel, former police personnel and joined sympathisers who were given the necessary instructions and promises of gaining the material profit;

(b) The perpetrators of torture belong to ethnic groups different from the victims;

(c) The methods of torture were universal physical, psychological and psycho-sexual. The methods are recognisable compared to the data in different countries all over the world;

(d) It is significant that the same methods were used both in rural and urban areas, in the most distant villages as well as in the towns (e.g. the parts of Sarajevo);

(e) The objectives of torture were the war objectives: creating ethnically clean territories with material profit through destruction of personality of the victim and destruction of the family as the cell of each social community. Torture in the war is recognised by the international community;

(f) International documents stating it are, among others:

- (i) The Report of the special rapporteur of the UN Commission for Human Rights submitted to the United Nations referring to the territory of B&H in the period 1992-1995;
- (ii) The report of Amnesty International 1992-1996;
- (iii) UN Report: Rape and Sexual Assault 1994, UN Commission under the leadership of M. Sherif Bossiouni, Annex IX, 28th December 1994.

57. Torture was inflicted at the places of imprisonment on about 200.000 imprisoned people. (Documentation Centre of the Union of Camp Prisoners of Bosnia and Herzegovina, 2002) and in the people's homes. The significant number of those people now lives in foreign countries because they had priority for emigration.

58. According to the knowledge of the Centre for the Victims of Torture, the physical, psychological and psycho-sexual methods of torture were noted during the war.

(a) Among physical methods of torture, the following were inflicted:

- (i) Physical torture causing the extreme pain;
- (ii) Physical torture causing fear facing the near death;
- (iii) Physical torture causing the extreme fatigue;
- (iv) Physical torture causing crippling, body damage and physical disability;

(b) Among psychological methods of torture, the following ones were inflicted:

- (i) The techniques of weakening the victim:
  - To teach the victim to be helpless;
  - To cause fatigue;
  - To create the intense fear;

- (ii) The techniques of destroying the personality:
  - To cause the fear, guilt, shame, to lose self-respect;
- (c) The techniques of sexual torture:
  - (i) Damages caused by direct physical injuries;
  - (ii) Pushing the sharp objects into the body openings;
  - (iii) Scorching with the cigarettes;
  - (iv) Forcing the sexual intercourse followed by other physical and psychological methods of torture in presence of witnesses, members of the family, spouse.

59. The consequences of torture on the clients treated in the Centre for the Victims of Torture are: physical, psycho-somatic, psychological and social.

#### **Social-economic consequences**

60. The following data represent the results of the evaluation of the specially drawn up questionnaire consisting of 28 questions, taken by the Centre for the Victims of Torture:

- (a) 179 clients treated in the Centre for Victims of Torture were surveyed. Of this number 169 persons or 94% stayed in prisons or were subjected to torture and abuse;
- (b) 95,5% left homes forcibly;
- (c) 8% returned to their homes;
- (d) 92% trying to solve the housing problem;
- (e) 74% were very often abused in the camps;
- (f) Men were regularly tortured;
- (g) Only 6,5% of women stated they were not tortured;
- (h) 95% of the interviewees show the negative effect on health;
- (i) 93% the loss of economic status;
- (j) 64% reduced capacity to work;
- (k) 71% spoiled family relations;
- (l) The number of unemployed increased from 7,1% to 46,7%;
- (m) 60,3% having extremely bad and 31,9% having bad material situation;

(n) 92% of clients have serious health and economic damages and are dependent of humanitarian aid and material support.

61. The health difficulties of the victims of torture - 188 clients were interviewed. It has been found that the physical discomforts and psychological impact of torture and trauma of the survivors are linked.

62. The most frequent physical discomforts are: the consequences on bone and muscle structures (chronic difficulties), heart disorders, respiratory system disorders, digestion system disorders, mental disorders: lack of concentration, reduced attention, memory, orientation.

63. The consequences in case of the survivors of torture on the psychological level - 90 clients who were interviewed were subjected to the long-term multi-disciplinary treatment. On the SCL-90 scale, the test that contains 90 psychological symptoms as the consequence of torture and trauma, all clients showed the high level of presence of psychological consequences.

64. The most distinct psychological consequences are: fear, depression, physical discomfort related to psychological causes, the fear of certain situations and communication causing introverting and self-isolation, disturbing thoughts, extreme sensitivity and distrust in relations with the people, the loss of self-estimation and self-respect.

65. After 6 months of multi-dimensional treatment (general medical treatment, psycho-therapeutic treatment, physical-therapeutic treatment) the majority of clients had alleviated psychological symptoms, but, still, all the clients showed the high presence of psychological symptoms, i.e. none of the clients showed recovery that would be on the level of the norm for average population not being traumatised.

66. It has, also, been proved that there is a high level of connection between the severity, morbidity and duration of the torture and severity of the psychological consequences.

67. The stated facts in the above text prove that these are late psychological consequences of torture and there is the tendency to chronic difficulties and maintaining the level of permanent damage in psychological functioning reflecting on the efficiency of the victim of torture in every-day life. This, also, has a negative impact on consolidation of the family life of the victim of torture and is the realistic and expected risk for trans-generation transfer of the trauma (i.e. the transfer of psychological consequences to children and further generations of the survivor).

68. On the basis of the research and clinical results of the medical and psychiatric professionals in the Centre for Victims of Torture from 1997 to 2002, we can conclude that a high level of psychological and social consequences has been found among the population of the victims of torture living in the post-war society.

69. The victims of torture must cope with not only the consequences on health but, also, the consequences of social nature.

70. Clear are the needs to involve the society in supporting the medical and psychological rehabilitation and providing the concrete support in overcoming the social and economic difficulties that follow this population.

### **The women association “Medica”**

71. Since it was founded (April 1993), during the tragic conflict in Bosnia and Herzegovina, Medica opened its door to the women that survived certain forms of war violence. In the beginning it focused its work on providing the psychological support and medical help for women that survived the crime of war rape. During the time, its activity evolved - from dealing with the consequences of the war trauma to providing therapeutic treatment for the survivors of any sort of violence, as well as for numerous other problems of women and children. Medica continues to provide psycho-social and medical care for women in the post-war period, as well.

### **Medica nowadays**

72. The Centre for Therapy of Women with its services continues to be at the disposal of women and children. Its orientation to women and their problems is profiled through educational activities: vocational training provides the prerequisite for social and economic independence of women. The associates of Medica share their gained knowledge with the others through different training in the field of trauma, efforts, activities in non-governmental organisations, organisational development, humanisation of the relations between the sexes, non-violent communication...

73. The statistic data of the Centre for Therapy of the Women, Medica Zenica, show the number of victims of different forms of torture, treated at the stationary accommodation in the Centre, as well as within the out-patient psychological-psychiatric counselling centre within the period from April 1993 to April 2003.

### **The stated data to the area of Zenica and Visoko**

74. Since the beginning of the project in 1993 until the end of 2002 the houses Medica 1 and 2 accommodated 636 women and 319 children - total 955 persons, and Medica 3 in Visoko (August 1993 - August 1996) accommodated 56 women and 59 children (115 persons).

75. The data about the number of the newly admitted and stationary accommodated clients, as to their age is as follows.

76. For the purpose of this report the relevant are the data about:

The victims/survivors of war rapes: 76 women and girls.

77. Other war traumas include the camp torture, wounding, survived physical violence, survived bombardment, survived military activity and attacks in the place of residence, bombardment, house burning, expulsion etc. and they refer to 105 women and girls.

See Table No. 1 - Table summary of the Report

Relevant data: Survived war rapes: 77 women and girls

Psychological consequences of war and post-war stress and trauma: 418 women and girls

Psychological consequences of suffered loss: 108 women and girls



The special category are the refugees/exiles/asylum applicants from Kosovo: 11 women

The summarised data of stationary accommodation and treatment in psychological-psychiatric counselling centres:

War rapes: 153 women and girls

Other war traumas (previously stated: camp torture, wounding, attack with weapons and the like: 523 women and girls)

Psychological consequences of suffered loss: 223 women and girls

Refuges/exiles/asylum applicants from Kosovo: 11 women.

(This number is bigger because under the category of refugee trauma that refers to stationary accommodation there are over 5 persons from Kosovo, which is possible to check and come to the completely precise data).

78. The research carried out on 81 women that survived war rapes:

Medica Zenica - the research on psychological consequences of the survived war rape in 81 women is under way.

79. The first summary of the data shows 6 rapes in the closer community, and 1 in the broader community compared to the total number of 81 women and girls. The total number of 11 children were born as the result of rape, of which 7 have been given for adoption. 4 abortions were performed.

80. The research on the sample of 244 men - the exiles in Zenica, was carried out in the period 1992-1993.

81. The forms of torture that they survived: beating with slight injuries: 100 prisoners; beating with fractures: 18; torture with cold weapons (knife, pitchfork): 19; stay in the cell for solitary confinement: 48 prisoners. Two prisoners state 188 days of stay in solitary confinement.

Starvation: 95 prisoners; being held in cold or hot water: 55 prisoners; prohibition to do the physiological needs: 10 prisoners.

Sexual abuse:

Yes - without affirmative answers

No - 65 prisoners

No answer: 40 prisoners.

(2 prisoners state solitary confinement that lasted for 188 days)

Psychological torture:

Swearing: 80 prisoners

Insults on the account of members of the family: 45 prisoners

Ethnic insults: 75 prisoners.

82. The parts of the reports submitted by the non-governmental organisation finish with the last data.

### **Introduction**

83. Besides the descriptive part referring to the war period 1992-1995, all-inclusive reporting about individual articles of the Convention also refers to and describes the real status of the activities from 14.12.1995, being the date when the Constitution of Bosnia and Herzegovina entered into force, to 30.06.2003.

84. Before execution of the Constitution of Bosnia and Herzegovina the previous name of the state of Bosnia and Herzegovina was Republic of Bosnia and Herzegovina.

85. Article I of the Constitution of Bosnia and Herzegovina stipulates: "Republic of Bosnia and Herzegovina, whose official name from now on is "Bosnia and Herzegovina" continues its legal existence according to the international law as the state with the internal structure modified by this Constitution within the existing internationally recognised borders. It remains the member country of the United Nations and as Bosnia and Herzegovina, it can retain its membership or require acceptance in the organisations within the system of United Nations as well as other international organisations".

(a) Legal status of international treaties obliging Bosnia and Herzegovina are:

According to the Article II/2 of the Constitution, rights and freedoms stipulated in the European Convention for Protection of Human Rights and Freedoms and the protocols thereto are directly applied in Bosnia and Herzegovina. These acts have the priority over any other law.

(b) Annex II/5 of the Constitution of Bosnia and Herzegovina stipulates:

"All treaties ratified by Bosnia and Herzegovina between 1.1.1992 and the date of entering into force of this Constitution will be presented to the members of the Presidency within 15 days from the date of starting their duty; each treaty that is not presented shall be proclaimed annulled. Within 6 months after the first session of the parliament, and upon the request of any member of the Presidency, the parliament shall consider whether it will terminate any other treaty.

86. According to the Law on Taking Over and Applying the Federal Laws which are applied in Bosnia and Herzegovina as the laws of the Republic (Official Gazette of R Bosnia and Herzegovina NR 2/92 and 13/94), the Republic of Bosnia and Herzegovina has also taken over the Law on the Procedure of Concluding and Execution of the International Treaties

(Official Gazette of Bosnia and Herzegovina NR 29/00) as well as former Federal laws relating to ratification of international treaties and agreements. By this provision the Law on Ratification of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UN 1984) enacted by former SFR Yugoslavia has also been taken over.

87. According to the provision of the Annex II/2 of the Constitution of Bosnia and Herzegovina all laws, regulations and court rules of procedure being in force in the territory of Bosnia and Herzegovina at the time when the Constitution enters into force, shall remain in force to the extent to which they do not contradict the Constitution, until the competent government authority of Bosnia and Herzegovina decides otherwise. On the basis of this provision the Law on Taking Over and Applying the Federal Laws that were applied in Bosnia and Herzegovina as the laws of the Republic, including the Law on Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (UN 1984) have remained in force.

88. According to the Article V/3/d of the Constitution of Bosnia and Herzegovina, the Presidency of Bosnia and Herzegovina is authorised for negotiating the conclusion of international treaties of Bosnia and Herzegovina, their termination and, upon the approval of the parliament, for ratification of such treaties. Ratification of the international treaties is performed by the Presidency of Bosnia and Herzegovina on the basis of its decision.

89. Except for the provisions of the Article II/2 of the Constitution that stipulate that the European Convention for Protection of Human Rights and Fundamental Freedoms and the protocols thereto is directly applied in Bosnia and Herzegovina and has the priority over any other law, the Constitution of Bosnia and Herzegovina does not contain an explicit provision according to which the other published international treaties ratified in Bosnia and Herzegovina would be deemed to be the direct positive law at the supra-legal level.

90. In 2002 Bosnia and Herzegovina also signed the European Convention on Preventing Torture, Inhuman and Degrading Treatment and Punishment. According to its authorisations and standards, the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out its first periodical visit - monitoring in Bosnia and Herzegovina in the period from 27.4.2003 to 9.5.2003. CPT visited the places where the persons were arbitrarily arrested (prisons, psychiatric institutions, police stations and places where the State Border Service detains the persons). After monitoring, in co-ordination with the officers for contacts of Bosnia and Herzegovina and the officers for contacts of the entities, on 9.5.2003 there was a meeting with the ministers and higher officials of the portfolio ministries of Bosnia and Herzegovina, entities and District of Brčko. At that occasion the present persons were informed by the delegation of CPT that the European Committee for prevention of torture and inhuman or degrading treatment and punishment would be informed in writing about the performed monitoring along with the instructions given to the portfolio ministries of Bosnia and Herzegovina, entities and District of Brčko how to act.

91. The written observations of CPT were submitted to the officers for contacts of B&H and further submitted to the portfolio ministries of Bosnia and Herzegovina, entities and District of Brčko.

## Article 1

92. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment has become the integral part of the legal system of Bosnia and Herzegovina.

93. There are several regulations in the Criminal Code of Bosnia and Herzegovina, Criminal Code of the Federation of B&H, Criminal Code of Republika Srpska and Criminal Code of District of Brčko of Bosnia and Herzegovina that stipulate criminal offences containing some of the characteristics in terms of the definition of torture stated in the Article I/1 of the Convention.

94. It should be stated that prohibition of torture has been raised to the level of the constitutional law both in the Constitution of Bosnia and Herzegovina and the Constitutions of both entities.

95. The right of a person not to be subjected to torture or inhuman or degrading treatment and punishment is stipulated under the Article II/3 of the Constitution of Bosnia and Herzegovina.

96. The Article II/A/2/1/f of the Constitution of the Federation of Bosnia and Herzegovina stipulates that all the persons on the territory of the Federation enjoy the right to prohibition of torture, cruel or inhuman treatment or punishment.

97. The Article 14 of the Constitution of Republika Srpska stipulates the following:

“No one may be subjected to torture, cruel, inhuman or degrading treatment or punishment”. Any extortion of confession or statement shall be forbidden and punishable. It shall be forbidden to conduct medical and other scientific experiments upon any person without his/her consent.”

98. The persons claiming to have been the victims of torture or any other cruel, inhuman or degrading treatment or punishment can address to the institution of the Ombudsman for Human Rights of Bosnia and Herzegovina for protection of his/her rights, i.e. to the Ombudsman of the Federation of Bosnia and Herzegovina, i.e. the Ombudsman of Republika Srpska depending on what level of authority the official person or persons that have committed the abuse stipulated by the Convention belong to.

99. Besides the institution of ombudsman, in order to protect their rights, the persons claiming to have been the victims of torture or other cruel, inhuman or degrading treatment or punishment can use the legal means allowed by the law, such as:

(a) They can lodge the criminal charges to the competent prosecutor against the responsible person;

(b) They can lodge the claim for compensation to the competent court against the physical or legal person;

(c) They can start the administrative lawsuit against the final administrative acts;

(d) They can use the legal remedy stipulated by the law such as regular and exceptional remedies;

(e) When all, by law stipulated remedies are used, they can address to the Human Rights Chamber of B&H i.e. submit the appeal to the Constitutional Court of Bosnia and Herzegovina;

(f) They can request disciplinary procedure against the responsible person.

100. The Criminal Code of Bosnia and Herzegovina incriminates the crime of torture and other forms of cruel, inhuman or degrading treatment or punishment committed by the official person or other person (Article 190 of the Criminal Code of Bosnia and Herzegovina).

101. According to the Article 190 of the Criminal Code of Bosnia and Herzegovina “An official or another person who, acting upon the instigation or with the explicit or implicit consent of a public official person, inflicts on physical or mental pain or severe physical or mental suffering for such purposes as to obtain from him or a third person information or a confession, or to punish him for a criminal offence he or a third person has perpetrated or is suspected of having perpetrated or who intimidates or coerces him for any other reason based on discrimination of any kind, shall be punished by imprisonment for a term between one and ten years.”

102. The arrested and convicted persons must be treated in a humane manner respecting personal dignity of the individual (Article II, item 3 of the Constitution of Bosnia and Herzegovina - the catalogue of rights). “It shall be forbidden to extort a confession or any other statement from the suspect, the accused or any other participant in the proceedings.” (Article 10 of the Criminal Procedure Code of Bosnia and Herzegovina). The Paragraph 2 of the same Article of the Criminal procedure Code stipulates the regulation that “The Court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential infringement of this Code”.

103. The court decision may not be based on evidence derived from the evidence referred to in paragraph 2 of the Article 10 of the Criminal Procedure Code of Bosnia and Herzegovina.

104. The crime of torture is incorporated in the separate part of the Criminal Code of Bosnia and Herzegovina stipulating the crimes against humanity and values protected by international law. In the Article 172, paragraph 1 of the Criminal Code of Bosnia and Herzegovina it is stipulated that “Whoever, as part of a widespread systematic attack directed against any civilian population, with knowledge of such an attack perpetrates the act of torture or other inhuman acts of similar nature that have been committed in order to inflict great pain or severe physical or psychological abuse or damage of health, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.”

105. In terms of the paragraph 1 of this Article the expression “torture” is deliberate grave physical or mental pain or pain inflicted on a person detained by the accused or under the supervision of the accused, except for the pain or suffering arising only from execution of the legal sanctions.

106. In the Article 147, the Criminal Code of Bosnia and Herzegovina also stipulates the act of unlawful imprisonment committed by an official or responsible person in the institutions of Bosnia and Herzegovina, which says: “whoever unlawfully imprisons another person, keeps him imprisoned or otherwise restricts his freedom of movement shall be punished by a fine or imprisonment for a term not exceeding three years. The perpetrator shall be sentenced to imprisonment for a term from two to eight years if the unlawful imprisonment lasts longer than thirty days or has been committed in a cruel manner or the person that has been unlawfully imprisoned suffered the impairment of health or some other serious consequences occurred. If the person who has been illegally deprived of freedom lost his/her life, the perpetrator shall be punished by imprisonment for a term of not less than five years.”

107. The Criminal Code of Bosnia and Herzegovina stipulates the notion of “official person” and it says that the official person is the elected or appointed official in the bodies of legislative, executive and judicial office within Bosnia and Herzegovina and other governmental and administrative institutions or services which perform particular administrative, expert and other duties, within the rights and liabilities of the authority who has founded them; a person who continuously or occasionally executes the official duty in the mentioned administrative bodies or institutions; and other persons who are performing official duties on the basis of the authority arising from the law or other regulation enacted on the basis of the law.

108. The Chapter XVIII - Crimes against freedoms and rights of the citizens in the Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation Bosnia and Herzegovina NR 43/98) stipulates certain criminal offences that directly relate to application of the Article 1 of the UN Convention against torture. According to the crime of torture in performing the duty as stated under the Article 189 of the Criminal Code of F Bosnia and Herzegovina, the official person who, in performing the duty, tortures the other person, inflicting serious physical or mental pain, intimidating or insulting him/her, shall be punished by imprisonment for a term from three months to five years. For the purpose of more intense protection of freedoms and human rights, the stricter punishment has been stipulated for this criminal offence than it was the case in the former Criminal Code of the Federation of Bosnia and Herzegovina.

109. In case of the crime of extortion of the statement from the Article 188, paragraph 1 of the Criminal Code of F Bosnia and Herzegovina the official person that, in performing the duty, uses force, threat or other non-permitted means or non-permitted manner in order to extort the confession or some other statement from the accused, witness, expert or some other person, shall be punished by imprisonment for a term from three months to five years, and according to the paragraph 2 of that Article, if the extortion of the statement or confession is followed by serious violence or if, due to the extorted statement, especially serious consequences have arisen for the accused in the criminal procedure, the perpetrator shall be punished by imprisonment for a term from one to ten years.

110. It is considered that with the dispositions and stipulated sanctions the stated criminal offences are in function of application of the Article 1 of the Convention. Considering that the Criminal Code of the Federation of B&H does not stipulate criminal prosecution for these crimes ex officio, it would be necessary to oblige the public prosecutor, by virtue of amendments and changes, to prosecute the perpetrator ex officio.

111. The Constitution of Republika Srpska, Article 14, stipulates that no person may be subjected to torture, cruel, inhuman or degrading treatment or punishment, and that it is forbidden and punishable to extort the confession or statement, and that it is forbidden to perform any medical and other scientific experiment on any person without his/her consent, so it can be concluded that the provisions of the Article 1 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment are incorporated in the Constitution of Republika Srpska, and the Criminal Code of RS stipulates that the acts characterised by what is stated in the Article 1 of the Convention are deemed to be criminal offences.

112. The Chapter XXVII - Criminal Acts against Official Duty of the Criminal Code of RS stipulates the acts whose activities are contained in the Article 1 of the Convention. The crime of extortion of the statement from the Article 348 of the Criminal Code of RS stipulates that “The official who, in discharge of his duty, uses force, threat or other not allowed means or not allowed manner with intention of extorting testimony or other statement from the defendant, witness or expert or any other person, shall be punished by imprisonment in term ranging between 6 months to five years.” “If the extortion of testimony or statement was followed by heavy violence or had resulted by especially harmful consequences for the defendant in the criminal proceedings, the perpetrator shall be punished by imprisonment ranging between 1 and 8 years.”

113. Article 349 of the Criminal Code of RS - infringement of human dignity by abuse the official position or authority it is stipulated that “Official who in discharge of his duty, by abuse of his position or authority grossly mistreats, cares, inflicts bodily injury or generally treats another in the manner that insults human dignity, shall be punished by imprisonment for a term not exceeding 3 years”.

114. Article 10 of the Criminal Procedure Code of RS stipulates that “It is forbidden and punishable to extort the confession or some other statement from the accused or other person taking part in the procedure” and the Article 218 paragraph 8 of the same Code says: “No force, threat or other similar methods may be used against the accused in order to obtain his statement or confession”.

115. The provisions of the Article 1 of the Convention contained in the criminal part - Unlawful Deprivation of Freedom from the Article 145 of the Criminal Code of RS say:

“If the official, by abusing the official position or authority, arrests or unlawfully imprisons a person, keeping the person imprisoned or, in some other manner deprives another person of freedom of movement, or, in some other way restricts the freedom of movement shall be punished by imprisonment for a term not exceeding three years.”

116. The Criminal Code of RS (hereinafter CC RS) has not incorporated a special definition of torture as it is defined by the Article 1 of the Convention against torture and other cruel, inhuman and degrading treatment or punishment.

117. The acts as described by the provisions of the Article 1 of the Convention are contained in CC RS in a number of different incriminations.

118. These acts are defined in the CC RS in the part relating to physical and severe physical injuries (Article 134 and the Article 135 of CC RS).

119. The definition of the physical injury, Article 135 of CC RS says: “Whoever physically injures or impairs the health of another person.”

120. The definition of the severe physical injury, Article 135 of CC RS says: “Whoever severely physically injures or causes grave impairment of the health of another person, or whoever physically injures or impairs the health of another person so severely as to jeopardise the life of the injured person, or the important part of his body or an important organ is impaired or is permanently and significantly weakened causing permanent disability of the injured to work, or the health of the person is permanently or severely impaired or the person is physically deformed.”

121. The physical injury, Article 134 of CC RS and the severe physical injury Article 135 of CC RS are contained in the Chapter 15 - Criminal Offences against Life and Limb.

122. The stipulated punishment for physical injury from the Article 134 of CC RS can be a fine or imprisonment not exceeding 2 years, and for the severe physical injury from the Article 135 of CC RS it is the imprisonment between 6 months to 12 years, which depends on the consequence that has occurred so that the most severe punishment is pronounced in the case of death of the injured person, and it ranges between 1 to 12 years.

123. The acts contained under the Article 1 of the Convention are also contained in the provisions of the Article 348 of CC RS. The Article 348 of CC RS says: “The official who, in discharge of his duty, uses force, threat or other not allowed means or not allowed manner with intention of extorting testimony or other statement from the defendant, witness or expert or any other person.”

124. The punishment stipulated by the law is imprisonment between 6 months up to 5 years. “If the extortion of the confession or statement is accompanied by severe violence or if due to the extorted statement especially severe consequences occurred.” The stipulated punishment is imprisonment for a term between 1 and 8 years.

125. The acts stated under the Article 1 of the Convention are also defined under the Article 349 of CC RS. The Article says: “Official who in discharge of his duty, by abuse of his position or authority grossly mistreats, cares, inflicts bodily injury or generally treats another in the manner that insults human dignity” shall be punished by imprisonment in term not exceeding 3 years.

126. It is important to mention that in the territory of Republika Srpska also death penalty was stipulated for the most severe crimes, but after signing the General Framework Agreement for Peace in Bosnia and Herzegovina in 1995 it was abolished, which was the obligation arising from the European Convention on Protection of Human Rights, i.e. the protocol NR 6 being the integral part thereof. Instead of death penalty the life imprisonment has been introduced. Thus, the last measure that fell into the group of irrational methods of protection of the society was



eliminated from the legislation of RS, i.e. the methods not being in accordance with the civilised and cultural standards of the modern society. Besides, it is the measure that is not in accord with re-socialisation and human right to life as the fundamental and sacred human right being the basis of all other human rights.

127. In the Criminal Code of the Federation of B&H, in the Chapter XVIII - Criminal Offences against Freedoms and Rights of Individuals and Citizens, besides already interpreted Articles 188 "Extortion of Statement" and the Article 189 "Mistreatment in performing the duty", also the Article 185 of CC of F B&H stipulates the crime of "Unlawful Search" which says: "The official who, in performing the duty, unlawfully searches the apartment, rooms or persons, shall be punished by imprisonment for a term between 3 months to three years."

128. Within the period from 1996 to 30.06.2003, according to the available data of the Federal Ministry of Interior, in the territory of the Federation B&H five criminal offences of unlawful deprivation of freedom were recorded, where the perpetrator was known and two where the perpetrator was not known, as well as one criminal offence of unlawful search, but not one crime of mistreatment in performing the duty and extortion of statement was recorded.

129. The Criminal Code of the District of Brčko of Bosnia and Herzegovina does not have the incorporated special definition of the crime of torture, as it is stipulated by the Article 1 of the Convention against torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. However the notion of the concept of the definition of the Article 1 of the Convention can be understood in the provisions of some articles of the Criminal Code of District of Brčko. The crimes that could be understood as torture are the crimes such as severe physical injury, Article 169 which says: "Whoever severely injures another person or causes grave impairment of his health". (paragraph 1) or "Whoever physically injures another person or causes impairment of his health so severely as to jeopardise the injured person's life or causes the impairment or permanent or significant weakening of the important part of the person's body or some important organ or causes the permanent disability of the injured to work, or permanent or grave impairment of his health or deformation of the person" (paragraph 3).

130. The provision of the Article 1 of the Convention is contained in the provisions of the Article 178 of CC of District of Brčko, "Extortion of Statement" and in the Article 179 of CC of District of Brčko "Mistreatment in performing the duty".

131. The Criminal Code of the District of Brčko B&H does not stipulate death penalty or physical penalty. According to the Criminal Code of the District of Brčko, the perpetrator of the criminal offence can be punished by imprisonment or by a fine, and for the most severe premeditated crimes the punishment is a long-term imprisonment (from 25 to 40 years.)

## **Article 2**

132. In realisation of the obligations from the Article 2 of the Convention against torture, Bosnia and Herzegovina has done the following:

- (a) On the 1st March 2003 the following laws entered into force on the state level;
- (b) Criminal Code of Bosnia and Herzegovina (Official Gazette of B&H NR 03/03);

(c) Criminal procedure Code of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina NR 03/03);

(d) The Law on Protection of Witnesses under Threat or Vulnerable Witnesses (Official Gazette of Bosnia and Herzegovina NR 3/03).

133. In its Articles 10 and 13 the Criminal Procedure Code of Bosnia and Herzegovina stipulates the following:

(a) Article 10

“Legally Invalid Evidence”

“It shall be forbidden to extort a confession or any other statement from the suspect, the accused or any other participant in the proceedings. The Court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential violation of this law.

The Court may not base its decision on evidence derived from the evidence referred to in paragraph 2 of this Article.”

(b) Article 13

“Right to Trial without Delay”

The suspect or accused shall be entitled to be brought before the Court in the shortest reasonable time period and to be tried without delay. The Court shall also be bound to conduct the proceedings without delay and to prevent any abuse of the rights of any participant in the criminal proceedings. The duration of custody must be reduced to the shortest necessary time.”

134. The Criminal Code of Bosnia and Herzegovina stipulates several articles intended to prevent torture by means of penal sanctions, and these are the articles 147, 148, 220, 224, 230, 236 and 241.

135. The criminal prosecution for the criminal offences is performed by the Prosecutor’s Office of Bosnia and Herzegovina before the Court of Bosnia and Herzegovina. From the time when the Criminal Code of Bosnia and Herzegovina entered into force on 1st March 2003 to 30.06.2003 there were no cases of starting the criminal procedure pursuant to the mentioned articles.

136. The Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Official Gazette of Bosnia and Herzegovina NR 3/03) special measures are stipulated to protect the witness under threat or vulnerable witnesses in the criminal proceedings before the Court of Bosnia and Herzegovina for the criminal offences under the jurisdiction of the Court.

137. According to the mentioned Law:

(a) The witness under threat is a witness whose personal security or the security of his family is endangered through his participation in the proceedings, as a result of threats, intimidation or similar actions pertaining to his testimony;

(b) A vulnerable witness is a witness who has been severely physically or mentally traumatised by the events of the offence or otherwise suffers serious mental condition rendering him unusually sensitive, and a child and a juvenile;

(c) A protected witness is a witness heard according to the provisions of the Articles 14 through 23 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses.

138. The State Border Service (SBS) within the Ministry of Security of Bosnia and Herzegovina officially started operating on 1st June 2000. The basic responsibility of the State Border Service is protection of the state border, control of state border crossing, of persons and merchandise, prevention of illegal migration and trafficking in persons, as well as smuggling of goods.

139. In SBS the situations in which, in performing the regular duties and tasks, it is necessary to use force are inevitable at the occasion of doing the police work, and they must always be recorded. The Table 7 states the statistics of the force used by the SBS B&H officials for the period from forming the Service up to now. The data for 2000 are for the period from 01.06 - 31.12. and the data for 2003 for the period 1.1. - 30.06.

140. Taking into consideration the kind of a job that this Service performs as well as the location of performing it (open spac(e), it seems logical that over 97% of use of the methods of compulsion happened in the open areas. The use of force mainly meant physical power, while the baton (as the compulsory equipment of a police officer) was not used in any of the cases. The use of firearms (for all four calendar years since the SBS Bosnia and Herzegovina was founde(d) were used eight times, each time by firing into the air. The reason for the difference between the number of times when methods of compulsion were used: 39 (the sum of the columns 2 and 3) and the application of the force: 41 (sum of the columns 4,5 and 6) is that in several times there was a combined use of physical power and firearms aimed to intimidate the persons trying to escape. Only in two cases of using the methods of compulsion there were slight injuries of the persons against whom the force was used, while there were no severely injured nor dead.

See Table No. 2 - Table summary of the Report

141. The control of fair treatment during the work of the officials of the Service is continually monitored. Wrongdoing at work or possible exceeding the authority is punished by disciplinary measures against the officials of the Service, and it can be done ex officio or on the basis of the submitted complaints of the persons outside the service.

142. The by-laws on disciplinary and material responsibility of the officials of the State Border Service of Bosnia and Herzegovina prescribe the violation of official duty that are punished, and for the purpose of this report the following is pointed out:

(a) Failing to perform or irresponsible or careless performance of duties and failing to act according to the valid by-laws, regulations or instructions or other valid acts of SBS Bosnia and Herzegovina during performance of the duty;

(b) Failing to provide legal and other professional assistance within the rights and responsibilities for the ignorant client in exercising his/her legal rights and legal interests;

(c) Behaviour harmful to reputation of SBS Bosnia and Herzegovina;

(d) Indecent (unbecomin(g) behaviour with the civilians, associates and other persons employed in SBS Bosnia and Herzegovina;

(e) Preventing or forbidding the civilians or legal persons to exercise their right to submit a request, claim or application, or other submission, complaint or petition or other existing legal rights, i.e. failing to make a decision upon such submission in due time and within the legal deadlines;

(f) Concealing the facts referring to time, scope and manner of performance of the official duties or using the methods of compulsion by another official, when doing such an act of methods of compulsion he obviously committed the violation of the official duty;

(g) Using the methods of compulsion and/or firearms contrary to the stipulated rules.

143. Abuse of office or official authority. Each offence or action based on or aimed to discrimination based on race, colour of the skin, sex, language, religion, political or any other opinion, national or social origin, income scale, birth or other status.

144. The table number 3 states the statistics of the disciplinary proceedings against the officials of the Service, ex officio, on the basis of the submitted complaints for the threats addressed to the persons by the officials of the Service. On this basis, five disciplinary proceedings were conducted, four of which on the basis of the submitted complaints and one on ex officio basis, and all the punishments were punishments by a fine.

See Table No. 3 - Table summary of the Report

145. While checking the files of the conducted disciplinary proceedings it was found that so far there have been no cases conducted for the following acts:

(a) Using of force to extort the statement of a person;

(b) Sexual abuse or harassment by the official;

(c) Excessive use of force.

146. However there has been recorded a case conducted against three officials of the Service for their involvement in trafficking in women for which reason they were discharged from work in the Service and against whom the indictment was presented at the competent court (the case dating from 2001).

147. Also, the proceeding against an official of the service was conducted for illegal crossing of the state border of two foreign citizens into Republic of Croatia, for which he was discharged, and the criminal proceeding against that person is under way before the court (the case from 2002).

148. It is important to emphasise that in case of submission of the complaints whether by the local or foreign citizens, i.e. submission of anonymous or signed complaints, the Internal Control department of the State Border Service of B&H always conducts the investigation which can refer to the provisions as prescribed under the Article 13 of the Convention.

149. In the territory of the Federation B&H as the integral part of Bosnia and Herzegovina, the Article II.A.2 of the Constitution of the Federation of B&H (Official Gazette of F B&H NR 1/94 etc.) stipulates the human right of prohibition of torture and cruel and inhuman treatment or punishment. The Constitution of the Federation of B&H enacted on 30th March 1994, in its Article IX, item 5 says that all the laws, other regulations and court rules being in force in the Federation on the date of entry into force of this Constitution shall remain in force to the extent to which they are not contradictory to this Constitution, until the authorities decide otherwise.

150. Thus, all the laws, including the criminal laws for providing legal protection against crime, by which the application of the Convention against torture is enabled, have remained in force.

151. No exceptional circumstance may be invoked as the justification of torture, including the state of war in our country within the period 1992-1995, nor the decision on cease of the state of war dated 22.12.1995, nor the state of threat of war that lasted until 22.12.1996. No regulation whatsoever prescribes that the orders of a superior officer or authority may be invoked as justification of torture.

152. The basic function of the criminal legislation of Republika Srpska is that the criminal legislation protects fundamental rights and freedoms of an individual and a citizen as well as other fundamental individual and universal values, defining which acts are the criminal offences, and prescribing the punishment and other sanctions for the committed offences within the legal procedure.

153. Thus, the criminal legislation is a fundamental legal instrument in protection of a man, his rights and freedoms, but, at the same time, it is the self-restriction of the state against arbitrary acts of its authorities through the control performed by the independent judiciary.

154. Defining the criminal offences against humanity and international law, the Chapter XXXIV the Criminal Code of RS (Articles 432-450), clearly defines that such acts are based on the provisions of the valid international law contained in a number of international

documents, including the provisions of this Convention, and that the exceptional circumstance, whether the state of war, a threat of war or a state of public emergency or the order of a superior officer or authority may not be invoked as a justification for torture.

155. The criminal legislature of RS protects the fundamental rights and freedoms of a man and citizen and other fundamental individual and universal values established and guaranteed by the legal order. This protection is provided by defining what acts are the criminal offences, prescribing the punishment and other sanctions for such offences and pronouncing those sanctions against the perpetrators of the criminal offences in the proceedings as prescribed by the law.

156. No person may be convicted by a punishment or other sanction for the offence which, before having been committed, had not been stipulated by the law as the criminal offence and described as to its character, and for which the punishment had not been prescribed by the law.

157. The officials of the Ministry of Interior of Republika Srpska are obliged to protect human rights, freedoms and security of the citizens and obey the regulations of the Law on Interior Affairs of RS, The Law on Criminal Proceedings and the Criminal Code.

158. Lawfulness in treatment by the officials of the police is one of the fundamental prerequisites for proper functioning of the entire police system, particular attention to which is paid by the Ministry of Interior of RS through implementation of educational, supervisory and repressive measures at all operational levels.

159. In accordance with this, the authorised official is obliged to protect and secure the life of a man and human dignity and only those measures and compulsive instruments causing the least harmful consequences as prescribed by the law may be applied in order to achieve the execution of the official task.

160. Application of the methods of compulsion prescribed by the law are: physical power, official baton, tying equipment, special vehicles, instruments for blocking the vehicles and persons, particularly trained dogs, tear gas and firearms.

161. According to the law, the control of use of the methods of compulsion is done by the head of the authority within 24 hours from the moment of use and he estimates the justification, i.e. regularity in use of such methods. If the methods of compulsion are used without justification or irregularly, certain measures are taken against the authorised official.

162. In 1999 the officials of the Ministry of Interior of RS used the methods of compulsion in 125 cases. In three cases they used firearms, and in 122 cases it was a baton, physical power or tying equipment. In 118 cases the methods of compulsion were used according to the law and properly, and in 7 cases it was unlawful and irregular.

163. Eight indictments were lodged to the public prosecutor against 8 persons, and the requests for misdemeanour proceedings were lodged to the Misdemeanours Court against 124 persons.

164. During 1999 in Republika Srpska there were 64 attacks against the officials of the Ministry of Interior, which is 7 attacks less than in 1998.

165. During 2000, the officials of the Ministry of Interior of RS used the methods of compulsion in 165 cases, of which 6 cases included the use of firearms, in 159 it was a baton, physical power and the tying equipment. In 158 cases the methods of compulsion were used according to the law, and in 7 cases it was found that these methods were used unlawfully and irregularly.

166. The indictments were lodged to the public prosecutor against 37 persons, and the misdemeanour claims were lodged at the Misdemeanour Magistrate's Court against 153 persons. During 2000 in the territory of Republika Srpska 72 attacks against the officials of the Ministry of Interior were committed.

167. During 2001, the methods of compulsion were used in 199 cases, of which 10 cases included the use of firearms, and in 186 cases it was the baton, physical power and the tying equipment, and in 3 cases there were other methods of compulsion. In 192 cases the methods of compulsion were used according to the law, and in 7 cases they were used unlawfully and irregularly.

168. The indictments were lodged to the public prosecutor against 61 persons, and the misdemeanour claims were lodged at the Misdemeanour Magistrate's Court against 193 persons. During 2001 97 attacks against the officials of the Ministry of Interior of RS were committed, which is 25 more than in 2000.

169. During 2002, the officials of the Ministry of Interior of RS used the methods of compulsion in 208 cases, of which 6 cases included the use of firearms, and in 201 cases it was a baton, physical power and the tying equipment, and in 1 case there were other methods of compulsion. Only in one case it was found that the methods of compulsion were not used in accordance with the law and properly.

170. The indictments were lodged against 69 persons, and the misdemeanour claims were lodged against 171 persons. During 2002 86 attacks against the officials of the Ministry of Interior of RS were committed, which is 8 cases less than in 2001.

171. The attacks against the officials were committed during performance of their official tasks or during application of the official authorisations against the perpetrators. The greatest number of attacks were committed while the officials were making up the disturbed law and order, during the control and regulating the traffic, arrests and providing the assistance.

172. The Ombudsman of Republika Srpska, since the time the office was founded in 2000 up to now has received 5 claims referring to mistreatment of the citizens by the police. After the conducted investigations and establishing the facts, the Ombudsman gave his recommendations on the basis of which the superior officers in charge started the disciplinary proceedings against individual police officers.

173. On the basis of the Dayton Peace Accords, in the territory of Bosnia and Herzegovina, two police forces were established, i.e. the Ministry of Interior of the Federation B&H and the Ministry of Interior of Republika Srpska.

174. In the Federation of B&H the police forces are highly decentralised, and a number of authorisations are transferred to the canton ministries of interior. This required enactment of the laws and by-laws necessary for functioning of the police. Thus, in the Federation B&H there is a Federal Ministry of Interior and 10 canton Ministries of Interior. The Federal Ministry of Interior performs the duties falling under its jurisdiction and has not the commanding or control function over the canton ministries of interior, except for some cases in implementation of the Federal regulations.

175. The task of the police is to protect all the people and property, ensuring that the valid laws and regulations are respected, and to prevent criminal activities and maintain public law and order. The police officers perform these duties without bias according to the highest standards of conduct in implementation of the law, respecting human rights and dignity and making efforts to gain the trust of the public.

176. The valid Criminal Procedure Code of FB&H, contrary to some previous authorisations of the authority of interior are more restricted and certain rights of the citizens not having been stipulated are, now, guaranteed.

177. So, in accordance with the Article 187 of the Criminal procedure Code of FB&H, the official of the interior, in the so called preliminary procedure may take the person into custody if there is any reason for which the custody is prescribed in the Article 183 of the Criminal Procedure Code, however, the officials are obliged, without delay and not later than 24 hours, to take such a person before the competent investigating magistrate or the investigating magistrate of the low instance court under whose jurisdiction is the territory where the criminal offence has been committed, if the seat of that court can be reached faster. If the person taken into custody is not taken to the investigating magistrate within the prescribed time, he/she shall be released.

178. Then, they can carry out the search of the apartment and other rooms and temporary forfeiture of things only on the basis of the issued court warrant, except for certain precisely stipulated cases when the court and the prosecutor's office may be subsequently informed accordingly.

179. While talking, i.e. interviewing the citizens, the authorised official is obliged to acquaint them with the provisions of the Article 4 of the Criminal Procedure Code, according to which they are not obliged to give the requested information, i.e. statement, except the personal data, and that they are entitled to obtain the lawyer.

180. While searching the apartment and other rooms, for the purpose of objectivity and fair treatment, according to the provisions of the Criminal Procedure Code, two adult witnesses must be present.



181. The police officers are entitled to use the appropriate and proper methods of compulsion such as:

Physical power and a baton, allowed chemicals prescribed by the international standards, the instruments for forced stopping or blocking the vehicles and persons, official dogs and water cannon, when it is absolutely necessary, in order to block the attack against themselves or other persons, a person or a building being under their safeguarding, and in order to defeat the resistance of a person they are supposed to detain or take into custody and to prevent the escape of such a person.

182. Besides these cases, the police are entitled to use the tying equipment only when it is necessary to prevent the escape or when a person subjected to the search uses force. The use of firearms is allowed under the precisely prescribed conditions, only when it is absolutely necessary, and when the police officer cannot perform the task by other means.

183. The police officers who used force in performing their duty are obliged to submit a report to the superior officer, and it is further submitted to the Unit for Internal Control within 24 hours after the shift is over. The direct superior officer submits the opinion about the use of force to the head of the police department and the Internal Control within 3 days. If the internal control finds that the police officer irregularly used the methods of compulsion or firearms, the Minister is obliged to take the necessary measures immediately in order to establish the responsibility of that person.

See Tables Nos. 4 and 5 - Table summary of the Report

184. The legal system of District of Brčko B&H - the regulations relating to the police and judicial authorities stipulate prevention and punishment of all criminal offences which include torture and other cruel, inhuman and degrading treatment and punishment.

185. Besides the Statute of District of Brčko B&H, prevention of such offences is, also, prescribed by the regulations of the Criminal Code of District of Brčko, Law on Misdemeanours, Criminal Procedure Code and the Law on Police which stipulates the disciplinary responsibility of the police officers, as well as the Law on Execution of Criminal Sanctions.

186. The officials of the police of District of Brčko B&H, in performing their duties in the domain of the police, must observe the Criminal Procedure Code and the Law on Police. Each act of the police officials is controlled as to lawfulness, professionalism, tactfulness and fairness in behaviour with citizens in order to protect human rights to the greatest possible extent.

187. The procedure of starting the proceedings to determine the responsibility of the police in cases of the complaints of citizens against conduct of the police officials is precisely prescribed, and in case a citizen lodges the complaint against any form of torture or some other form of unlawful treatment.

188. The internal control of the police of District of Brčko is obliged, within 30 days, to inform the claimant about the results of investigation. Each authorised person is obliged to receive the complaint against the conduct of the police officers registering it on a specially prepared form sheet.

189. The most delicate field in the domain of the police work is lawful application of the methods of compulsion, where the police officers are exposed to permanent danger of exceeding the official authorisations. To prevent all forms of unlawfulness in applying the methods of compulsion the Police of District of Brčko apply different supervisory methods on daily basis, as well as professional training, thorough analysis of each case of use of methods of compulsion, especially in cases of exceeding the official authority.

190. Since the police of District of Brčko was established on 20th January 2000 the records of the use of methods of compulsion are kept. 2000 - 8 cases of use of methods of compulsion: physical force 7 cases and rubber baton 1 case.

191. In one case there was a slight injury of a person against whom the force was used. After the proceedings about justification of use of force had been conducted, it was determined that the use of force in all cases was justified.

192. In 2001 there were 9 cases of use of methods of compulsion: physical force - 8 cases and rubber baton - 1 case. In one case there was a slight injury. After the proceedings had been conducted about justification of the use of force, it was determined that in all cases the methods of compulsion were justified.

193. In 2002 there were 13 cases of use of methods of compulsion: physical force - 13 cases. There were no cases of injury, and after the proceeding had been conducted regarding the justification of use of the methods of compulsion, it was determined that it was justified.

194. In 2003 (first 6 months) there were 18 cases of use of methods of compulsion: Physical force - 17 cases and rubber baton - 1 case. There were no injuries and after the proceedings had been conducted it was determined that the use of methods of compulsion was justified. It is necessary to emphasise that in all cases where the methods of compulsion were used there were no cases of injury of the police officers.

### **Article 3**

**Reference is made to regulations of the Penal Procedure Code of Bosnia and Herzegovina (ZKP BiH), articles: 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426 and 427**

195. In the Article 507, paragraph 1, item 10 of the Criminal Procedure Code of the FBiH (Official Gazette of the Federation BiH NR 43/98), for the purpose of protection of human rights, as the prerequisite for extradition there is also the DISCRIMINATORY CLAUSE that extradition of an alien is not requested because of criminal charges or punishment on the basis of his race, sex, national or ethnic origin, religious beliefs and political attitudes: and if the extradition is not requested for the criminal offence for which the death penalty is prescribed according to the law of the State requesting extradition, to provide the guarantee that the death sentence shall not be passed nor executed.

196. The decision on the basis of which extradition is or is not allowed in the Federation B&H is made by the Ministry of Justice of FB&H.

197. When making a decision upon which extradition of an alien is allowed, Federal Ministry of Justice, on the basis of the Article 515 of the Criminal Procedure Code, takes care of all relevant circumstances, and states in the decision that more severe punishment than the one to which he has been convicted may not be applied against the alien.

198. The Chapter XXXI of the Criminal Procedure Code of the Federation B&H that was in force until 1st August 2003 until enactment of the new code stipulates the procedure of extradition of the accused and convicted persons (Articles 505-522 of the Cod(e)). One of the prerequisites for extradition stated under the Article 507, item 10 says: "if extradition of an alien is not requested for the purpose of criminal proceeding or punishment based on his race, sex, national or ethnic origin, religious beliefs and political attitudes; or if the extradition is requested for the criminal offence for which death sentence is prescribed by the laws of the State requesting extradition, except when the State requesting extradition gives the guarantee not to pass or execute the death sentence."

199. The procedure of extradition of the accused and convicted aliens is started upon the request of the State and it is submitted via diplomatic channels (Article 508 of CPC of FB&H).

200. The Ministry of Foreign Affairs of B&H submits the request for extradition to the Federal Ministry of Justice via Ministry of Civil Affairs and Communications of B&H, and the Ministry of Justice is obliged to promptly forward the request to the investigation magistrate of the court having the jurisdiction in the territory where the alien is abiding at the time.

201. If the Council of the competent court finds that the legal prerequisites for extradition are fulfilled, it will be stated accordingly in the decision. An alien is entitled to appeal to such a decision to the Supreme Court of Federation of B&H (Article 513 of CPC FB&H). When the Supreme Court of FB&H confirms that the legal prerequisites for extradition of an alien are fulfilled, Federal Ministry of Justice, makes the decision by which it allows or does not allow extradition. (Article 515, paragraph 1 of CPC FB&H).

202. Illustrative is the case referring to the decision on acceptability and meritum of the Human Rights Chamber for B&H in the case of Eslam Durmo against Bosnia and Herzegovina dated 10th January 2003.

Encl. Decision of the Human Rights Chamber for B&H

203. Besides the measures stipulated by the Criminal Procedure Code of FB&H, in the territory of Federation B&H, the Law on Movement and Stay of Aliens was applied until December 1999, and since then the Law on Migration and Asylum of B&H has been in force (Official Gazette of B&H NR 23/99) which is unique for a the entire state of Bosnia and Herzegovina. Drafting of the new Law on movement and stay of aliens and asylum is ongoing and its enactment is expected in October 2003.

204. The procedure for extradition of the accused and convicted persons is prescribed by the Articles 524-540 of the Criminal Procedure Code of Republika Srpska and extradition of the accused and convicted persons is performed in accordance with these provisions, unless otherwise stipulated by international treaties, and expulsion of aliens from the state as a security measure is stipulated under the Article 65 of the Criminal Code of RS, where expulsion may be decided in term of one to ten years or it can be permanent.

205. The prerequisites for extradition are, among others, the fact that the offence for which extradition is requested is deemed to be the criminal offence according to both, the local law and the law of the state in whose territory it was committed, and that along with the request for extradition, also the extract from the text of the Criminal Code of the foreign state is submitted, which is to be applied against the accused whose extradition is requested. Movement, entrance, stay and settling of an alien is stipulated by the Law on Movement and Stay of Aliens (Official Gazette of RS NR 20/92), and it is directly applied by the Ministry of Interior.

206. The Law on Movement and Stay of Aliens (Official Gazette of RS NR 20/92) was applied in Republika Srpska until enactment of the Law on Migration and Asylum of B&H (Official Gazette of B&H NR 23/99).

207. According to the Law on Migration and Asylum of B&H, foreign citizens are to submit the request for asylum to the Ministry of Interior of Republika Srpska, Department for Aliens of the Centre of Public Security. Final decision on the approval of asylum is made by the Ministry of Human Rights and Refugees of B&H, investigating all the conditions under which the possible asylum refugees used to live in their native states. A person shall not be repatriated to the native State if he is found that he/she might be subjected to any kind of persecution or might not have economic conditions for living in that state.

208. An alien may be expelled from B&H under the conditions as stipulated by the law. The initiative for expulsion, pursuant to the mentioned law, is submitted by the Centre of Public Security of the Ministry of Interior of RS and along with the complete documentation, it is further submitted to the Ministry of Human Rights and Refugees of B&H within seven days from the date when the reason for expulsion was determined. The decision on expulsion is made by the Ministry of Human Rights and refugees in the form of an order (decision) instructing the expulsion of an alien for a certain period of not less than one year up to ten years. The dissatisfied alien is entitled to appeal to the Appeal Council at the Council of Ministers of B&H. The alien against whom the decision on expulsion has been made is to leave the country within one month from the date of submission of the final decision, or the order on expulsion shall be executed by the competent police. A foreign citizen shall not be expelled to the territory in which his life or freedom would be endangered for the reason of his religious or national origin irrespective of whether he has already officially got an asylum.

209. The measure of expulsion from the territory of Bosnia and Herzegovina is prescribed in the Article 29 of the Law on Migration and Asylum (Official gazette of B&H NR 23/99) stipulating as follows:

“An alien may be expelled from Bosnia and Herzegovina:

(a) if he stays in the territory of Bosnia and Herzegovina after the approval for his stay expires or if the approval is revoked pursuant to Article 30, 31 and 32.

(b) if a court in Bosnia and Herzegovina convicts him for the criminal offence and punishes him by imprisonment for a term of more than four years.”

210. The Article 30 of the same Law stipulates the following: Visas and approval of stay may be revoked:

(a) If an alien intentionally gives wrong data or conceals the circumstances of importance for issuing the approval;

(b) If an alien performs the activities for which a work permit is required, and he is not in possession of such a permit;

(c) If the presence of an alien is a threat to public order and security;

(d) Items (a) and (b) do not apply if an alien has lived in Bosnia and Herzegovina for a period of more than four years and has had an approval for stay and is able to prove the existence of exceptional reasons for this exemption.”

211. An appeal can be submitted against the decision on expulsion to the Council of Ministers of B&H within the period as stipulated by the law. The decision of the Appeal Council is final in the administrative proceedings and no appeal may be lodged against it but the civil suit may be submitted to the Court of Bosnia and Herzegovina. The civil suit does not postpone the execution of the decision. Article 41 of the same Law prescribes as follows:

“An alien against whom the decision on expulsion is made is to leave the state within one month from the date of submission of final decision, if the decision does not stipulate otherwise. Otherwise, the order for expulsion is executed by the competent police or service pursuant to these or other laws stipulating these issues.”

212. Article 34 of the same Law prescribes as follows:

“Aliens shall, by no means, be returned or expelled to the border of the territory where their life or freedom might be endangered due to their race, religion, nationality, membership in a social group or political opinion, irrespective of whether they have officially obtained the asylum. The prohibition of return and expulsion also refers to persons for whom there is a reasonable suspicion that they would be in danger of being subjected to torture or other inhuman or degrading treatment and punishment. Aliens may also not be sent to a state in which they are not protected against being sent to such a territory.”

213. Since the beginning of the activities of the Ministry of Human Rights and refugees of B&H, i.e. the department for Immigration and Asylum authorised to make the decisions on expulsion, since November 2000 to June 2003 expulsion was decided in 199 proceedings. An appeal was lodged to the Appeal Council against 66 decisions on expulsion, and first-instance decisions were confirmed in 52 proceedings. The Ministry does not have the data about realisation of these measures since, pursuant to the Article 41 of the Law on Immigration and Asylum the police are in charge of realisation of these activities.

214. Ministry of Interior of Republika Srpska, Department for control of movement and stay of aliens issue the visas, identity cards, register the stay, approve temporary stay, permanent residing, submit misdemeanour charges, and expel the aliens and cancel the approval for stay.

215. Within 6 months in 2000, 1885 temporary stays were approved to aliens, and the number of permanently residing aliens is 143, and 20 requests for permanent residing were submitted of which 6 were approved for permanent residing. Also 62 misdemeanour charges were submitted against aliens and 181 alien were expelled, and 132 stays were cancelled.

216. In 2001 534 visas were issued to aliens of which 34 business visas, 496 entrance-exit visas and 4 emigrant visas. 84170 stays were registered, 1868 temporary stays were approved, 518 were approved for residing, 18 applications were submitted for permanent residing of aliens, 113 misdemeanour charges were submitted against foreign citizens, 143 aliens were expelled and 81 approvals for stay were cancelled.

217. During 2002, 42 visas were issued of which 15 business visas, 27 entrance-exit visas, the number of registered stays was 86202, a number of approved temporary stays was 588, a number of permanent residing of aliens was 424, a number of applications for permanent residing was 19, and also 19 misdemeanour charges were lodged against foreign citizens, while 8 aliens were expelled and 4 stays were cancelled.

218. Within 6 months in 2003 36558 stays of aliens were registered, 309 temporary stays were approved, 198 permanent residing approvals were issued, 27 applications for permanent residing were submitted, 16 requests for permanent residing were approved, and 6 misdemeanour charges were lodged against foreign citizens, and 2 aliens were expelled.

219. As Bosnia and Herzegovina is facing a great increase of illegal migrations, the territory of District of Brčko B&H is facing the same situation, particularly regarding trafficking in people, organised prostitution and interceding in prostitution, organised transfer of foreign citizens across the state border.

220. In order to control the mentioned activities the Police of District of Brčko B&H performed the activities in co-operation with the basic court, public prosecutor's office, State Border Service and international organisations. Due to illegal stay and prostitution the following activities were performed and the following sanctions were passed:

(a) 2001:

- (i) 18 requests for misdemeanour proceeding against foreign female citizens were lodged;
- (ii) 18 security measures were imposed for expulsion of aliens from the territory of District of Brčko for a term of 6 months to 1 year;

(b) 2002:

- (i) 17 requests for misdemeanour proceeding against foreign female citizens were lodged;
- (ii) 17 security measures were imposed for expulsion of aliens from the territory of District of Brčko for a term of 6 months to 1 year;

(c) 2003:

- (i) 1 request for misdemeanour proceeding against foreign female citizens were lodged;
- (ii) A fine was imposed.

221. Within the period 2000-2003 several facilities and persons were discovered who were involved in trafficking in women, interceding in prostitution, and criminal indictments were lodged on the basis of which the following punishments were imposed.

222. The owner of a club who organised transport of women, renting the rooms for prostitution, making arrangements with the clients, was punished by imprisonment for a term of 18 months as well as the fine in the amount of 4.000,00 KM for the criminal offence stipulated under the Article 212, paragraph 2 of the Criminal Code of District of Brčko.

223. One person who committed the offence of psychological pressure over the victim, forcing her to prostitution and collect money for sexual services and keep records on sexual services, was punished by imprisonment for a term of six months for the mentioned criminal offence.

224. Furthermore, one perpetrator of the criminal offence of keeping records on sexual services and collecting payment for sexual services was punished by imprisonment for a term of 3 months. The victims of the mentioned criminal offences were three female persons, the citizens of Ukraine.

225. For the criminal offence of organising the transport of girls, renting the rooms for prostitution, making arrangements with the clients, the owner of one club was punished by imprisonment for a term of 5 months and the fine in the amount of 3.000,00 KM for the criminal offence stipulated by the Article 212, paragraph 2 of the Criminal Code of District of Brčko.

226. For the criminal offence of collecting payment for sexual services, keeping records on sexual services, the waiter in one club was punished by imprisonment for a term of 3 months, and the security guard for the criminal offence of preventing the escape of the girls, watching the movement of the police, was punished by imprisonment for a term of 2 months for the mentioned criminal offence.

227. Five girls, foreign citizens, were the victims of the mentioned criminal offences, three of which were the citizens of Romania, and two were the citizens of Moldavia.

228. For the criminal offence of organising the transport of girls, renting the rooms for prostitution, making arrangements with the clients, the owner of one club was punished by imprisonment for a term of 3 months, also for the criminal offence stipulated by the Article 212, paragraph 2 of the Criminal Code of District of Brčko, and the waiter of the same club for the criminal offence of collecting payment for sexual services and keeping records of sexual services (Article 212 of the Cod(e) was punished by imprisonment for a term of 18 months.

229. The victims of the criminal offence were foreign citizens, i.e. two citizens of Ukraine, and one of Belarus and two of Moldavia.

230. For a reason of substantial suspicion of having committed the offence of organised transport, renting the rooms for prostitution, making arrangements with the clients, the criminal proceedings is ongoing against the owner of a club. The proceedings are conducted before the Basic Court of District of Brčko for the criminal offence stipulated by the Article 212 of the Criminal Code of District of Brčko, as well as against the waiter for the criminal offence of collecting payment for sexual services and keeping records of sexual services.

231. For the criminal offence of organised transport, renting the rooms for prostitution, making arrangements with the clients, one perpetrator was punished by imprisonment in term of 18 months and the fine in the amount of 3.000,00 KM, and one perpetrator of the criminal offence of organising the transport, renting the rooms for prostitution, was punished by imprisonment for a term of 5 months; one perpetrator, a security guard, for the criminal offence of preventing the escape of the girls was punished by imprisonment for a term of 5 months; the security guard for inside and outside security was punished by imprisonment for a term of 5 months, and there is the ongoing proceeding against one person who is suspected to have committed the same criminal offence.

232. The victims of the mentioned criminal offences were foreign citizens, i.e. four female persons, the citizens of Moldavia and one from Romania.

233. For the criminal offence of interceding in prostitution the perpetrators of these offences were punished by the following punishments:

- (a) Two convicted persons - each was punished by imprisonment for a term of 5 months;
- (b) One convicted person - punishment by imprisonment for a term of 3 months and a fine in the amount of 4.500,00 KM;
- (c) One convicted person - punishment by imprisonment for a term of 6 months;
- (d) One convicted person - imprisonment for a term of 3 years.

234. For a criminal offence of being a pimp the imprisonment and fines were imposed:

- (a) One convicted person - imprisonment for a term of 4 months and a fine in the amount of 5.000,00 KM;
- (b) One convicted person - imprisonment for a term of 4 months and a fine in the amount of 5.000,00 KM;
- (c) One convicted person - imprisonment for a term of 4 months and a fine in the amount of 1.000,00 KM;
- (d) One convicted person - imprisonment for a term of 8 months and a fine in the amount of 5.000,00 KM.



235. Taking-over the control of the state border from the police of the entities by the State Border Service B&H (SBS B&H) was performed gradually since 2000 and was completed at the end of 2002. Nowadays, SBS B&H consists of 21 units controlling 1.551 km of state border where there are 48 international crossings, and 4 international airports. The units are managed from the Head Office, through six field offices. The control in the protected area of the state border of B&H (area 10 km wide, from the state border penetrating into the territory of B&H) is performed by two mobile units and two units in charge of watching. Within SBS B&H there is a Central Investigation Office and Educational Centre where all officials of the Service must receive the training.

236. It is important to know that establishing of SBS B&H, monitoring its work and equipping of SBS was permanently under the supervision and immeasurable assistance of the International Community.

237. The beginnings of operation of the Service were simultaneous to the period when B&H was a state of transit for tens of thousands of illegal immigrants from Eastern and south-eastern Europe, Africa and Asia who were trying to reach the West. The problems in work occurred for the reason of absence of necessary legislation and applying of all relevant laws passed on the level of entities.

238. However, besides all objective problems that this Service used to face, but also the ones it faces nowadays, we can certainly be satisfied with the achieved results, especially in the field of prevention of illegal immigration and trafficking in people. At the end of 2002 illegal immigration amounted only to 13% of the amount that the Service registered in 2000, and it is probably significantly lower compared to the illegal immigration in the neighbouring countries.

239. In the text to follow in this report we shall try to detect the problems that the officials of SBS are facing in their work and what are the most frequent acts of the local and foreign citizens while crossing the state border of B&H; manner and treatment of the perpetrators of unlawful acts by the officials of the Service; and control of work of the officials of the Service and their punishment in cases of violation of the regulations prescribed by the law or in case of exceeding the limits of their authority, stating the statistic indices available in the records.

240. Great importance is given to the tasks of control of crossing the state border of B&H because it is one of the ways to prevent illegal immigration and to discover and find illegal immigrants, organisers and companions of illegal crossing. However, great difficulties in work is the lack of sanctions in the Law on Immigration and Asylum of B&H (This law entered into force on 31st December 1999), so that the perpetrators, according to this law, cannot be processed. This serious absence of legal regulations is tried to be surmounted by submitting requests for legal processing of the perpetrator on the basis of the laws on the level of entities (the laws that stipulate the field of crossing the state border and movement within the border area, which was taken over from the laws of SFRY with slight changes).

241. However, the things do not move forward without obstacles. According to the Constitution of B&H (1996) the state border and its protection is under the responsibility of the state authorities, but, when the Law on Immigration and Asylum entered into force, the laws of the entities (Laws on Crossing the State Border, Movement and Stay of Aliens dating

from 1994 - RS, and 1995 - FB&H) that stipulate crossing of the state border were not put out of force. So, we have the situation that the courts, particularly those in the Federation of B&H, mostly fail to process according to this taken-over law, while the situation with the courts in Republika Srpska is completely the opposite.

242. Still, in September this year the new law on Movement and Stay of Aliens and Asylum shall enter into force, and it will, certainly, make the present situation much better arranged. For the purpose of this report, we consider it important to quote some of the provisions of this new law which refer to Article 3 of the Convention, such as:

243. No discrimination whatsoever based on any grounds, including sex, race, colour of skin, language, religion, political and other opinions, national and social origin, ethnic minority, property status, age, psychological or physical disability, status gained by birth or some other status may be expressed towards aliens. (Article 6)

244. Aliens shall, by no means, be repatriated or expelled to the border of the territory where their life or freedom would be endangered due to their race, religion, nationality, belonging to any social group or due to political opinion, irrespective of whether they have or have not been approved the asylum. Prohibition of repatriation or expulsion refers to persons for whom there is a substantial suspicion that they would be in danger of being subjected to torture or other inhuman or degrading treatment and punishment. Aliens may, also, not be sent to a country where they are not protected against expulsion to such a territory. (Article 60).

245. Certain problems also occur in case of criminal legislation at the entity levels, because these laws are not mutually harmonised, and (in the original form without changes and amendments) they have not the incorporated provisions of the Conventions signed by B&H. The disadvantages of the entity level legislation were also significant because of absence of possibility to submit requests for processing the persons who are, in any form, involved in smuggling the people or trafficking in people. With entry into force of the Criminal Code of B&H and Criminal Procedure Code of B&H (1st March 2003) we can expect that these problems will be surmounted. New criminal codes of the entities that are being prepared will be harmonised with the Law enacted on the state level.

246. Submissions of the Service for criminal proceeding of the persons for illegal crossing of the state border, i.e. for organising or interceding in such activities, are statistically presented in the Table K 1. The data for 2000 refer to the period 1.6. - 31.12., while the data for 2003 refer to the period 1.1. - 30.6.

247. From the stated statistic indices it can be clearly noticed that from 1.6.2000 - 30.6.2003, 98 indictments were submitted for organising illegal crossing of the state border, of which 75% refer to the citizens of B&H, 17% to the citizens of Serbia and Montenegro, while the remaining 8% refers to the citizens of R Croatia, Slovenia and Turkey.

248. The participation of the citizens of B&H in these illegal activities and in such a high percentage seems to be logical if we consider that this is a state in transition where the war recently stopped and whose bad social situation is favourable for attracting the persons inclining to criminal activities. Still, what objectively encourages is the fact about the number of

indictments for the first half of the current year, which is significantly lower compared to the indices from the previous years, which confirms significantly reduced illegal immigration in B&H. It is important to emphasise that criminal processing of the perpetrators of such activities, whether they are the citizens of B&H or foreign citizens, is performed according to the same criminal codes (the codes of entities, and after 1.3.2003 the code of B&H) which is in accordance with the paragraph 2 of the Article 7 of the Convention.

249. All the units of SBS B&H have the instructions about their obligation to inform diplomatic and consular representative offices of the state about all the cases when a person being the foreign citizen is arrested, which is in accordance with the paragraph 4 of the Article 6 of the Convention.

See Table No. 6 - Table summary of the Report

250. For women who are assumed to be the subject of trafficking in people, Bosnia and Herzegovina is a country of transit on the way to the final destination.

251. The Table number 6 states the statistic indices about the recorded persons from this category, their number and citizenship, and the cases when the request for processing is submitted against them, as well as the number of persons handed over to the international and non-governmental organisations. The data for 2000 refer to the period 1.6 - 31.12, and the data for 2003 refer to the period 1.1. - 30.6. The requests submitted to the courts for processing these persons referred to the activities of illegal entrance into Bosnia and Herzegovina or a try of illegal stay in B&H as well as for the activities of using the falsified travelling documents or visas. The number of the persons against whom the request for processing was submitted for the committed criminal offence (33) and the number of recorded persons from that category (738) show that only against 4,5% of the recorded persons the request for processing was submitted, which is an index that shows how the service treats the persons who can be assumed to be the victims of trafficking in people. As Bosnia and Herzegovina still has not the organised refugee centres to accept the illegal immigrants, nor the safe houses to accommodate and take care of the persons being the victims of trafficking in women and children, these activities are performed by international organisations being active in B&H. The reason for a relatively small number of persons from this category handed over to the international organisations to be taken care of (23) is that a certain number of these persons were not approved to enter B&H when they were on the crossing, i.e. that on their exit from B&H they were approved to exit, while a significant number of these persons was handed over to the IPTF Mission in B&H (until the end of 2002), and they handed them over to IOM in B&H after informative interview and operational processing.

See Table No. 7 - Table summary of the Report

252. The most frequent citizenship of the persons assumed to be the victims of trafficking in women and children recorded by SBS B&H is Ukraine, Moldavia and Romania (See Table No. 8 – Table summary of the Report).

253. It is important to know that the State Border Service of B&H, through its Educational Centre, continually educates its officials about the need to prevent trafficking in people, especially in women and children. Through its representatives, SBS B&H was also actively involved in making the B&H Action Plan for Prevention of Trafficking in Women and Children.

254. In co-operation with the Ministry of Human Rights and Refugees of B&H there have been made the Temporary instructions for treatment of the victims of trafficking and all officials of SBS are obliged to obey them, and which guarantee efficient protection of the victims of trafficking according to the international standards of protection of human rights.

255. The Table K 3 presents the data that IOM in B&H made available, and they refer to the number of taken over persons assumed to be the victims of trafficking in women and children as well as the data about the number of persons of this category who were repatriated upon their free will. The data refer to the total number of persons taken over by SBS B&H as well as by Ministries of Interior of the entities and IPTF.

256. The total number of foreign female citizens taken over by IOM for the stated period is 677, and the number of repatriated persons is 518. The joint index in all three Tables is equality in recording the most frequent citizenship of the persons assumed to be the victims of trafficking in women, but, also, that, in this year, the number of the victims is significantly lower than in previous periods, and the possible reason might be the enactment of the Criminal Code of B&H which, for the first time in criminal legislation in B&H, applies the provisions of the protocol from Palermo, but also the fact that the current year is the first year in which SBS B&H starts controlling the entire territory of B&H.

See Table No. 9 - Table summary of the Report

257. Considering the fact that Bosnia and Herzegovina still has not the centres for taking over of illegal immigrants that should be deported or repatriated upon their will into their native countries, IOM in B&H has the program of willing repatriation of the illegal immigrants. The programme of willing repatriation was started by IOM in 2001. The ratio of the indices for 2002 and 2003 shows that illegal immigration in B&H is decreasing. The citizenship of the willingly repatriated illegal immigrants and the number thereof is the index showing the status of illegal immigration per each citizenship and the number thereof in the stated calendar year. So, in 2001 Turkish citizens were the only ones among the listed illegal immigrants in B&H, and this year these are the citizens of Serbia And Montenegro, Albania and China.

See Table No. 10 - Table summary of the Report

258. Bosnia and Herzegovina as a state of asylum is not interesting to majority of the immigrants, but only as a country of transit for going West. However, a certain number of persons - foreign citizens caught in trying the illegal crossing of the state border or illegal stay in B&H, after being discovered, apply for an asylum in B&H. The Law on Immigration and Asylum in B&H stipulates the regulations according to which all rights of foreign citizens applying for an asylum are respected - those guaranteed by the Convention from 1951. As Bosnia and Herzegovina has not established the asylum refugee centres, all activities regarding taking over and taking care of the asylum applicants as well as other necessary activities relating to the asylum applicants are performed by UNHCR. They also train the local personnel who, when the conditions are provided, will take over these activities.

259. Foreign citizens caught while trying to illegally cross the state border or illegally stay in B&H, who apply for an asylum, according to the Convention (Geneva Convention from 1951) are not subject to criminal proceeding. Table 5 states the statistic data about the number of

recorded persons who, after arrival to the state border applied for an asylum in B&H (the persons who applied for an asylum after arrival to the border crossing or after having been found within the protected area of the state border), as well as the number of persons who were handed over to UNHCR (all found persons, i.e. all the persons who applied for an asylum with the officials of the Service).

See Table No. 11 - Table summary of the Report

260. Table number 11 presents statistic indices of the requested and approved status of asylum refugee recorded by UNHCR that made these data available. The number of 2.106 requests for asylum refugee status and only 153 approved (only 7,3% were approved of the total number of requests) is the confirmation of the previous statement that B&H is only a country of transit to go West for a great number of illegal immigrants.

261. This table, also, shows the indicators of illegal immigration, i.e. the citizenship of the persons showing up in the greatest number in illegal immigration: 2000 - the citizens of Iran, 2001 - the citizens of Iran, Macedonia and Turkey; 2002 - the citizens of Macedonia, Serbia and Montenegro; 2003 - the citizens of Serbia and Montenegro. The index of 542 requested asylums in the first half of 2003 might give a wrong impression that illegal immigration in B&H is not decreasing, but the index that about 92% of all requests in the first half of this year refer to the citizens of the neighbouring country - Serbia and Montenegro, shows that the asylum was requested only to avoid legal proceeding for illegal entrance or stay in B&H.

See Table No. 12 - Table summary of the Report

#### **Article 4**

262. In realisation of the obligations from the Article 4 of the Convention against Torture, the criminal Code of Bosnia and Herzegovina stipulates several criminal offences during whose committing there might occur torture of a person in terms of the meaning of this word as stated in the Convention against Torture, although the notion "torture" in the meaning assigned to it according to the Convention against Torture is nowhere used in the Criminal Code of Bosnia and Herzegovina.

263. Reference is made to regulations of Criminal Code of Bosnia and Herzegovina, Articles 147, 148, 220, 224, 230, 236 and 241.

264. For an attempt - Article 26 of the Criminal Code of Bosnia and Herzegovina prescribes:

(a) Whoever intentionally commences execution of a criminal offence, shall be punished for the attempted criminal offence when, for the criminal offence in question, the punishment of imprisonment for a term of three years or a more severe punishment may be imposed, and for the attempt of another criminal offences when the law expressly prescribes punishment of the attempt alone;

(b) An attempted criminal offence shall be punished within the limits of the punishment prescribed for the same criminal offence perpetrated, but the punishment may also be reduced.

265. For accomplices - Article 29 of the Criminal Code of Bosnia and Herzegovina prescribes:

If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence.

266. For Incitement - Article 30 of the Criminal Code of Bosnia and Herzegovina prescribes:

(a) Whoever intentionally incites another to perpetrate a criminal offence, shall be punished as if he has perpetrated such offence;

(b) Whoever intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of three years or a more severe punishment is prescribed by law, and the criminal offence has never been attempted, shall be punished as for the attempt of the criminal offence.

267. For Accessory - Article 31 of the Criminal Code of B&H prescribes:

Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be reduced.

268. The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.

269. The Criminal Code of Federation of B&H in its separate part stipulates the criminal offences prohibited and punishable such as acts of torture, including an attempt and accomplices in committing certain criminal offences.

270. For these criminal offences the appropriate punishment is prescribed taking into consideration how severe they are. Criminal offences and criminal sanctions are prescribed only by the law.

271. Besides the criminal offences stated in relation to what is stipulated under the Article 1 of the Convention, it should be emphasised that a certain number of criminal offences in this field is qualified as a more severe offence if it is committed by the official person in performing the duty and these are:

The “Unlawful deprivation of freedom” from the Article 187, “Unauthorised tapping and recording” from the Article 195; “Violation of secrecy of the letter or other correspondence” from the Article 193; “Unauthorised photographing” from the Article 196; “Preventing and disturbing public meeting” from the Article 197; and “Violation of the right to submit the legal means” from the Article 198 of the Criminal Code of FB&H.

272. In case of some most severe criminal offences such as “murder” from the Article 171, “rape” from the Article 221, “severe physical injuries” from the Article 177, the legislator has already imposed relatively severe punishment in their fundamental form, but these offences are not separately defined when committed by the officials, i.e. when the criminal offence occurs during performance (abuse) of their duty, official position or official duty.

273. It is good illustration to state that on 2nd October 2001 the indictment was submitted to the Municipal prosecutor’s Office in Livno against four police officers for abuse of the position or authority, violent behaviour, causing slight physical injuries and concealing. Namely, one of these police officers, forcibly dragged a person out of the vehicle into the street and punched him with a fist four times in the head and chest. Two police officers who were present failed to take any official measures to prevent this event. After this, together with the other police officer, he pushed him into the police vehicle on the back seat using force, insulting the person saying insulting words and then, they took a person into a village, dragged him out of the car and beat him with legs and hands as well as a baton until one of them hit the man’s head with a baton when the person lost consciousness.

274. On 27th May 1997 one person submitted the claim to the Municipal Prosecutor’s Office in Ključ against four police officers of the Police Department in Ključ for the alleged criminal offence of unlawful deprivation of freedom. The stated police officers were suspended on 16th November 2002 and the criminal proceeding against them before the Municipal Court in Bihać is ongoing.

275. According to the Article 74 of the Law on Employment and salary of the officials of the administration of Federation of B&H, and the severe violation of duty is deemed to be abuse of the position or exceeding the authority on duty, as well as indecent behaviour on duty or in relation to the duty. For these violations the following disciplinary sanctions may be imposed in the disciplinary proceedings:

- (a) Fine in the amount of 20% but not more than 30% of the total monthly salary of the official;
- (b) Prevention of advance in service into higher official rank or higher salary rank, i.e. refusal of the periodical pay rise;
- (c) Transfer of the official to another post;
- (d) Removal of the official from the position, i.e. duty;
- (e) Discharge from service;
- (f) Discharge from service with the prohibition of re-employment in the administrative authorities, i.e. service for administration for the period of one year, starting from the date of discharge.

276. Hereby we state two specific cases as the illustration:

- (a) In 1997 the Disciplinary Commission of the Ministry of Interior of Canton Sarajevo, the disciplinary sanctions were imposed against 8 authorised officials of criminal

police of the Police department Stari Grad and Centar Sarajevo because, during the criminal processing of two persons, they exceeded the official authorisation physically mistreating the persons and causing slight physical injuries. One of these officials was punished by being discharged from service, and three were transferred to other posts, and four were punished by a fine;

(b) In 2002 the Disciplinary Commission of the Ministry of Interior of Canton Sarajevo imposed disciplinary sanctions against six police officers of the Police Departments Stari Grad, Centar and Novo Sarajevo because after chasing the vehicle driven by a juvenile person, and after stopping it, took part in the incident in which the physically mistreated him. The first-instance disciplinary commission punished five of these police officers by transfer to other posts for a limited period of time, and one was punished by a fine.

277. Criminal Code of Republika Srpska stipulates the criminal offences which prohibit and punish any act of torture, inhuman or degrading treatment. These are, in the first place, criminal offences stipulated under the Chapter sixteen of the Criminal Code of RS (Articles 141-164) where the subject of the legal protection is protection of human rights as prescribed by international law and the existing constitution of RS (Chapter 2 of the Constitution of RS. These are, in the first place the criminal offences such as: "Infringement of the Equality of Citizens" (Article 141 of CC RS); "Duress" (Article 143); "Abduction" (Article 144); "Lawless Deprivation of Liberty" (Article 145); "Preventing return of refugees and displaced persons" (Article 146); "Abuse" (Article 147); "Imperilling Security" (Article 148); "Illegal Search" (Article 150).

278. If we take into consideration that the fundamental right is protection of a human being, his life and physical integrity, and that all other rights would make no sense if this one were not protected, therefore the Criminal Code of RS places this protection in the first place. The Chapter on the protection of this right is stated under the criminal offences against life and physical integrity (Criminal Offences against Life and Limb - Articles 127-139) starting from "Murder" (Art. 127), "Slight Bodily Injury" (Art. 134) "Severe Bodily Injury" (Art. 135), "Participation in a Brawl" (Art. 136), "Exposure to danger" (Art. 138), "Abandonment of a Helpless person" (Art. 139) etc.

279. Article 27 of CC RS defines accessories and the same is valid if several persons take part in committing the offence, or in some other way they commit the offence together, and Article 24 of CC RS stipulates incitement of the criminal offence, and Article 25 stipulates helping in committing the criminal offence. The punishments for accessories and inciters are determined for the prescribed offence, while the accessory may have slighter punishment.

280. Article 20 of CC RS stipulates the punishment for the attempt to commit a criminal offence, and it stipulates that the attempt of a criminal offence is punishable and, according to the law, the imposed punishment may be imprisonment for a term of five years or more severe punishment, and for other criminal offences only when it is strictly prescribed by the law.

281. Punishment of perpetrators for the attempt to commit a criminal offence is within the limits of punishment that is prescribed for such an offence, but it may be slighter. Depending on the committed offence, the perpetrator is punished by a punishment that is prescribed for that offence, and the criminal offences and the sanctions are prescribed only by the law.



282. Besides criminal offences stated in relation to what the Article 1 of the Convention refers to, the Criminal Code of Republika Srpska (Chapter 16) “Criminal Offences against Civil Liberties and Rights” stipulates several criminal offences prohibiting torture and other cruel, inhuman or degrading treatment and punishment. These are:

- (a) “Infringement of the equality of citizens” (Art. 141);
- (b) “Duress” (Art. 143);
- (c) “Lawless deprivation of liberty” (Art. 145);
- (d) “Preventing return of refugees and displaced persons” (Art. 146);
- (e) “Abuse” (Art. 147);
- (f) “Infringing the inviolability of a dwelling” (Art. 149);
- (g) “Illegal search” (Art. 150);
- (h) “Impairing the secrecy of letters and other correspondence” (Art. 151);
- (i) “Unauthorised tapping and sound recording” (Art. 153).

283. Criminal Code of Republika Srpska, Article 20 stipulates and defines sanctions for the attempt of committing the criminal offence. The definition says: “Whoever intently commences execution of a criminal offence, but does not complete his doing, shall be punished for the attempted crime for which, by law, the punishment by imprisonment in term of 5 years or more may be imposed, and for the attempt of another criminal offence the punishment may be imposed only when the law explicitly prescribes the punishment for the attempt.” The perpetrator shall be punished for the attempt within the limits of punishment prescribed for the criminal offence of less severely”.

284. Criminal Code of RS also stipulates the punishment for accomplices. Article 23 says: “If several persons jointly commit a criminal offence by participating in the act of commission or otherwise, each of them shall be punished as prescribed for the act as though he/she has committed the offence him/herself.” The law prescribes the limits of responsibility and punishment for the accomplices. The accomplice is responsible within the limits of his/her intent or negligence, and the inciter and accessory shall be punished within the limits of the intent.

285. Besides criminal offences stated in relation to what the Article 1 of the Convention refers to, it should be stressed that a certain number of criminal offences in this domain is qualified as more severe criminal offence if it is committed by the official in performing the duty, and these are: “Unlawful Deprivation of Freedom ” (Article 187), “Illegal Tapping” and “Sound Recording” (Article 195), “Violation of Secrecy of letters and other correspondence” (Article 193), “Unauthorised Photographing” (Art. 196); “Preventing and Disturbing Public Meetings” (Art. 197) and “Violation of the Right for Submission of Legal Means” (Article 198 of the CC of FB&H.

286. In case of some most severe criminal offences such as “Murder” (Art. 171), “Rape” (Art. 221) and “Severe Physical Injuries” (Art. 177), the legislator has already imposed relatively severe punishments in their basic form, but these offences are not specifically defined when they are committed by the official persons, i.e. when the criminal offence occurs in performing (abuse of) of their duty, i.e. official position or official duty.

287. The Criminal Code of District of Brčko does not stipulate separately the criminal offence referring to torture and other cruel, inhuman or degrading treatment or punishment. The criminal offences against rights and freedoms of a citizen (Chapter XVII of CC) are:

- (a) Infringement of the equality of a person and citizen (Art. 174);
- (b) Prevention of return of refugees and displaced persons (Art. 175);
- (c) Unlawful deprivation of freedom (Art. 176);
- (d) Kidnapping (Art. 177);
- (e) Extortion of statements (Art. 178);
- (f) Mistreatment in performing duty (Art. 179);
- (g) Jeopardising security (Art. 180);
- (h) Infringement of inviolability of dwelling (Art. 181);
- (i) Illegal search (Art. 182);
- (j) Infringement of secrecy of letters and other correspondence (Art. 183);
- (k) Unauthorised revealing of professional secret (Art. 184);
- (l) Illegal tapping and sound recording (Art. 185);
- (m) Illegal photographing (Art. 186);
- (n) Preventing or disturbing public meetings (Art. 187).

#### **Article 5**

288. Realisation of the obligations arising from the article 5 of the Convention against Torture, is prescribed in Bosnia and Herzegovina by the provisions of the articles 11 and 12 of the Criminal Code of Bosnia and Herzegovina, which say:

#### **Applicability of Criminal Legislation of Bosnia and Herzegovina to Those Perpetrating a Criminal Offence within the Territory of Bosnia and Herzegovina**

#### **Reference is made to articles 11 and 12 of Criminal Code of Bosnia and Herzegovina**

289. According to the Article 130 of the Criminal Code the Federation B&H the criminal legislature in the Federation B&H is valid for any person who, in the territory of the Federation, on board of a ship, in domestic civil air transport or domestic military aircraft, commits a criminal offence, and prosecution is carried out upon the approval of the Federal prosecutor.

290. In terms of the Article 133 of the CC FB&H the criminal legislature is also valid for an alien who, in the territory of Bosnia and Herzegovina, or abroad, commits some other criminal offence against it or its citizen, besides the criminal offences stated under the Chapter XV - Criminal Offences against Constitutional Integrity of Bosnia and Herzegovina and Federation of B&H, if a person is found in the territory of Federation of B&H or is extradited.

291. Pursuant CC F B&H, the criminal legislature in the Federation is valid for any person who commits the criminal offence on board of a domestic ship, irrespective of where the ship is at the time when the offence is committed.

292. Criminal legislature in the Federation is valid for any person who commits a criminal offence on board of a domestic aircraft while on flight or in the domestic military aircraft, irrespective of where the aircraft is at the time when the offence is committed.

293. According to the Article 131 the criminal legislature in the Federation is valid for any person who, in the territory of Bosnia and Herzegovina, commits the criminal offences as stipulated under the Articles 137 to 152 in Chapter XV - against the constitutional integrity of Bosnia and Herzegovina and Federation.

294. Pursuant to Article 132 of the criminal legislature in the Federation is valid for any citizen of B&H who, in the territory of B&H or abroad, commits some other criminal offence, besides the criminal offences stated under the mentioned article 131.

295. Criminal legislature in the Federation is also valid for an alien who, in the territory of B&H or abroad, commits some other criminal offence against it or its citizen, besides the offences from the mentioned Article 131, if found in the territory of the Federation or extradited.

296. The criminal legislature in the Federation is also valid for an alien found in the territory of the Federation, who commits the offence in some other state against foreign state or some other alien and for which, by law of that state, the punishment may be imposed for a term of five years or more severe punishment.

297. According to the Article 120 of the Criminal Code of Republika Srpska (CC RS) the criminal legislature is valid for any person who, in the territory of Republika Srpska, commits a criminal offence, as well as for any person who commits the criminal offence on board of a domestic ship, irrespective of where the ship is at the time when the offence is committed.

298. Criminal legislature is also valid for any person who commits a criminal offence on board of a domestic aircraft while on flight, or in the domestic military aircraft, irrespective of where the aircraft is at the time when the offence is committed.

299. Article 121 of CC RS stipulates that criminal legislature of RS is valid for any person who, outside its territory or abroad, commits any of the offences stipulated under the Chapter 25 of CC RS - "Criminal Acts against State" (Articles 281-299) as well as a criminal offence "Falsifying Money" from the Article 263 of CC RS.

300. Criminal legislature is valid for a citizen of RS who, when abroad, commits some other criminal offence, besides the criminal offences against state and falsifying money, if found in the territory of RS or extradited. (Article 122 CC RS).

301. According to the Article 123 CC RS the criminal legislature is also valid for an alien who, outside RS, commits the criminal offence against it or its citizen, even when these are not the offences from the Article 121 (Criminal acts against state and falsifying money) if found in the territory of RS or extradited to it.
302. At the same time, the criminal legislature is also valid for an alien found in the territory of RS, who commits the offence against some other state or some other alien in some other state, and for which, by the law of that state, the punishment may be imposed for a term of five years or more severe punishment, if found in the territory of RS but is not extradited to the foreign state.
303. Criminal legislature of Republika Srpska applies to every person who commits a criminal offence in its territory. The territory of Republika Srpska is deemed to be the part of the territory of B&H, i.e. land and waters inside its borders as well as the air space over that territory.
304. Criminal legislature of Republika Srpska is valid for any person who, outside its territory or abroad, commits the offence against state or criminal offence of falsifying money. Criminal legislature of Republika Srpska is valid for a citizen of Republika Srpska who, when being abroad, commits some other criminal offence besides the offence against state and falsifying money, if found in the territory of Republika Srpska or is extradited to it. It is, also, valid for an alien who, outside the territory of RS, commits a criminal offence against it or its citizen, if found in the territory of RS or is extradited to it.
305. According to the Article 130 of the Criminal Code of F B&H the criminal legislature in the Federation is valid for every one who commits a criminal offence in the territory of the Federation. The criminal legislature in the Federation is valid for any person who commits a criminal offence on board of a domestic ship, irrespective of where the ship is at the time when the offence is committed.
306. According to the Article 131 the criminal legislature in the Federation is valid for any person who, in the territory of Bosnia and Herzegovina, commits the criminal offences as stipulated under the Articles 137 to 152 in Chapter XV - against the constitutional integrity of Bosnia and Herzegovina and Federation.
307. Pursuant to Article 132 of the criminal legislature in the Federation is valid for any citizen of B&H who, in the territory of B&H or abroad, commits some other criminal offence, besides the criminal offences stated under the mentioned article 131.
308. Criminal legislature in the Federation is also valid for an alien who, in the territory of B&H or abroad, commits some other criminal offence against it or its citizen, besides the offences from the mentioned Article 131, if found in the territory of the Federation or extradited.
309. The criminal legislature in the Federation is also valid for an alien found in the territory of the Federation, who commits the offence in some other state against foreign state or some other alien and for which, by the law of that state, the punishment may be imposed for a term of five years or more severe punishment.

310. Criminal legislature of District of Brčko B&H is applied to every person who commits the criminal offence in the territory of District of Brčko B&H. Criminal legislature of District of Brčko B&H is applied who commits the criminal offence on board of domestic ship or aircraft irrespective of where the ship or the aircraft is at the time when the offence is committed.

311. Criminal legislature of District of Brčko is applied against any person who, in the territory of F B&H or RS commits a criminal offence, if found in the territory of District of Brčko B&H. Criminal legislature is applied against the citizen of District of Brčko who commits a criminal offence abroad, if found in the territory of District of Brčko or is extradited. Criminal legislature of District of Brčko also applies to an alien who, outside the territory of District of Brčko, commits an offence against it or its citizen, if found in the territory of District of Brčko or is extradited.

### **Article 6**

312. Regulation of Article 6 Paragraph 3 of the Convention is implemented within Criminal Procedure Code of BiH, Article 5 of the Code. Regulation of Article 6 Paragraph 1 of the Convention is an integral part of domestic legislation. Criminal Procedure Code of BiH contains Chapter on Measures for ensuring presence of suspected, that is accused person and successful carrying of criminal proceedings within the following Articles 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136 and 137.

313. The criminal procedure is prescribed in the Criminal Procedure Code of Federation B&H. The domicile state must, without any delay, be officially notified about its citizen being taken into custody. The custody must be for the shortest possible period of time.

314. According to the Article 182 of the CPC of F B&H it is the obligation of all authorities participating in the criminal proceedings as well as the authorities providing legal assistance to act particularly fast if the accused is in custody.

315. Article 192, paragraph 1 of CPC prescribes that while being in custody the personal attributes or dignity of the accused may not be insulted. While being in custody the dignity or personality of the accused may not be insulted. The convicted who is a foreign citizen or who is in custody is entitled to contact the diplomatic – consular representative of his or the state protecting his interests (Article 124 of the Law on Execution of Criminal and Misdemeanours Sanctions).

316. The procedure for handing over the accused or convicted persons as well as the procedure of providing international criminal-legal assistance is stipulated by the Criminal Procedure Code of RS, if it is not otherwise stipulated by some other international treaty.

317. Criminal Procedure Code of RS stipulates that custody may be imposed only under the conditions stipulated by this Code. Duration of custody must be the shortest possible, and the obligation of all authorities participating in the criminal procedure and the authorities providing the legal assistance must act particularly fast if custody is imposed to a person. As soon as the reasons for which custody was imposed cease to exist, it shall be abolished at any stage of the proceeding.

318. Custody is imposed by the decision of the investigation magistrate for a period that may not exceed one month from the date of taking a person in custody. Custody may be extended upon the decision of the criminal council for two months more if a proceeding is conducted for a criminal offence for which the punishment by imprisonment for the term of more than five years or more severe punishment may be imposed. The Council of the Supreme Court may, for important reasons, extend custody for three months more.

319. As it has been stated, pursuant to Article 187 of CPC, the authorised persons of the Interior in the preliminary procedure, may take the person into custody if there is any reason whatsoever for custody as stated under the Article 183 of CPC; however, they are obliged to take that person to the investigation magistrate, without delay and not later than within 24 hours from the arrest. If the person is not taken to the investigation magistrate within the stipulated time, he/she shall be released.

320. According to the Article 183 of the CPC the custody may be ordered against a person:

- (a) If he hides or if other circumstances exist that suggest a possibility of fleeing;
- (b) If there is a justified fear to believe that he will destroy, conceal, alter or falsify evidence or clues important to criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, accessories or accomplices;
- (c) If particular circumstances justify the fear that he will repeat or complete the attempted criminal offence or commit a threatened criminal offence, and for such criminal offences a prison of three years may be pronounced or more;
- (d) If it is the criminal offence as stated in this article, for which, due to the manner of commission or the consequence, custody is necessary for ensuring safety of citizens.

321. The Criminal Procedure Code of Republika Srpska stipulates that custody will be ordered for the persons who are substantially suspected to have committed a criminal offence, under precisely prescribed conditions. Accordingly, custody is ordered by the judge of the competent court by written decision submitted to a person it refers to, at the moment of arrest, but not later than 24 hours from the moment of arrest.

322. A person in custody can lodge a complaint against the decision within 24 hours from the moment of handing over the decision. If a person in custody is interrogated for the first time after expiration of this time, he/she may lodge a complaint at the occasion of being interrogated. The complaint with the copy of minutes on interrogation, if a person in custody has been interrogated, and the decision on taking into custody, are submitted to the Council without delay. The complaint does not prevent the execution of the decision. If the investigation magistrate fails to agree with the proposal of the public prosecutor about ordering custody, the Council shall be required to make a decision.

323. On the basis of the Article 196 of the Criminal procedure Code the authority of interior may, exceptionally, order custody before starting the investigation proceedings, if, for identification, checking the alibi or some other reasons, it is necessary to collect the data necessary for conducting the proceedings against a person, and there are all, by law prescribed, reasons.

324. In the same manner, the authority of interior may order custody also if it is entrusted by the investigation magistrate to conduct the investigation activities, and such custody may last not longer than three days, counting from the moment of arrest. The authority of interior is obliged to notify the public prosecutor about taking a person into custody, i.e. the investigation magistrate if he entrusted that authority to conduct certain investigation activities. On the basis of the decision of the investigation magistrate, the accused may be retained in custody not longer than one month from the date of arrest, and custody may be extended for not more than two months upon the decision of the Council.

325. After submission of the indictment to the court until completion of the main trial, after hearing the public prosecutor, when the trial is conducted upon his request, custody may be ordered or abolished only by the decision of the Council. After expiration of two months from the date of entering into force of the last decision on taking into custody, the Council is obliged, without the proposals of the parties, to take the measures of taking care of children and other members of the family that the arrested person takes care of.

326. The official of the Ministry of Interior of RS is obliged to treat the arrested persons in accordance with the Instructions on treatment of the arrested persons that stipulate: the manner of taking over the arrested persons into the premises of the Department of Interior, the manner of their accommodation, health and hygienic conditions and board on the premises of the department of Interior. The Instructions also stipulate the accompanying documentation referring to the official arrest and the rights of the arrested, the manner of behaviour of the arrested, the obligations of the officials and other issues referring to treatment of the arrested persons by the officials. All arrested persons are under the appropriate supervision and they shall be treated in human manner under the circumstances that shall not impair their health, and shall not be exposed to physical or verbal mistreatment, discomfort or negative publicity. Only those restrictions necessary to prevent escape and contacts that could be harmful for successful conduct of a proceedings shall be applied against the arrested person.

327. The arrested person must, without delay, be handed over to the competent court or released. The records on arrests are kept at the Department of Interior. The arrested person who is injured or sick at the time of arrest shall be transported to the medical institution and examined by the medical doctor to estimate the condition and provide medical treatment. The room for accommodation of the arrested person is thoroughly inspected and after each use the data are recorded into the book of records. The room for accommodation of the arrested persons must be kept clean in accordance with the sanitary requirements. Regular control of hygiene is performed in such rooms and necessary measures are taken, if necessary. The arrested persons may receive visits with the previous written approval issued by the head of the department of interior that has arrested the person, and during the entire time of visit an official person must be present. The visit to the arrested persons takes place in a special room and lasts for 15 minutes, but it may last longer.

328. If the arrested person is interrogated, the defence attorney is enabled to enter the premises in order to be present during interrogation performed by the official, and the presence of the defence attorney is recorded in the Book of Records of Arrests. The arrested persons must not violate order at the premises of the department of interior. The arrested person is liable for the caused damage pursuant to the regulations on reimbursement of damage.

329. The Book of Records of Arrests contains the following sections:

- (a) Personal data of the arrested person;
- (b) Arrest;
- (c) Communication with the competent court and prosecutor's office;
- (d) The rights of the arrested persons;
- (e) Handing over of the arrested persons;
- (f) Release of the arrested persons;
- (g) Additional remarks;
- (h) Actions/events during the arrest.

330. The police officer performing the arrest is obliged to inform the arrested persons about the reasons for arrest and to read the following:

You are entitled:

- (a) Not to give any statement or reply to any question, except for your identity (Article 6 of the European Convention on Protection of Human Rights and Fundamental Freedoms);
- (b) To take a defence attorney who may be present at your interrogation;
- (c) To demand to get the defence attorney if you are not able to cover the costs of defence (from 2 to 3 legal basis, Article 6, paragraph 3 of the European Convention on protection of Human Rights and Fundamental Freedoms, and the Article 19 of the Constitution of Republika Srpska);
- (d) To be acquainted with the instructions for arrest;
- (e) To request, if you wish so, to have a member of your family informed about your arrest (Article 200, paragraph 1 of the Criminal procedure Code of Republika Srpska);
- (f) You may demand any of these activities now, or if you do not do so now, you may do it at any time while you are confined at the police station.

331. If the person is a foreign citizen, he/she is entitled to contact, at any time, his/her high representative, embassy or consulate and ask them to inform the others about where he/she is, as well as about the reasons for arrest. Foreign citizen is entitled to private visits of the representative of the embassy or representative office for conversation or arranging the legal advice.



332. The procedure of extradition of the accused is stipulated by the Criminal procedure Code of RS which prescribes the prerequisites for extradition, and one of these is that the person whose extradition is requested is not the citizen of this state, i.e. the citizen of Republika Srpska. The procedure for extradition of the accused and convicted aliens commences upon the request of the foreign state and it is submitted via diplomatic channels, and the prescribed documentation is attached to the request. The real jurisdiction for conducting the procedure of extradition of the accused and convicted aliens in Republika Srpska lies on to the District Court.

333. Besides custody and the promise of the accused not to abandon the place of stay and bail, and in order to ensure the presence of foreign citizen, the investigation magistrate may also order other measures appropriate to provide his/her presence.

334. The existence of grounded suspicion that the alien, whose extradition is requested, has committed the criminal offence is necessary. As soon as the reasons for custody cease to exist, the court must make the decision about abolishing it, and the custody may be replaced by some other less severe measure for providing the presence of the alien. The accused is entitled to get the defence attorney during the entire criminal procedure.

335. In urgent cases, when there is a danger that the alien might flee or hide, the police may arrest such a person and immediately take him to the investigation magistrate who may only order the custody for the alien. The investigation magistrate shall release the alien if the reasons for custody cease to exist or if the request for extradition is not submitted within the deadline he has determined, and which may not be longer than three months from the date of arrest.

336. Upon the request of the foreign state, the Council of the competent court may extend the deadline for not more than two months in justified cases.

337. As stated above, the official of the department of interior, in the preliminary proceedings, and according to the Article 187 of the Criminal Procedure Code, may arrest a person if there is any other reason for custody stated under the Article 183 of the Criminal Procedure Code, but he is obliged to take such a person to the investigation magistrate, without delay, and not later than 24 hours. If the person is not taken to the investigation magistrate within the prescribed period, he/she shall be released.

338. According to the Article 183 of the Criminal procedure Code the custody may be ordered against the persons:

- (a) If he hides or if other circumstances exist that suggest a possibility of fleeing;
- (b) If there is a justified fear to believe that he will destroy, conceal, alter or falsify evidence or clues important to criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, accessories or accomplices;
- (c) If particular circumstances justify the fear that he will repeat or complete the attempted criminal offence or commit a threatened criminal offence, and for such criminal offences a prison of three years may be pronounced or more;
- (d) If it is the criminal offence as stated in this article, for which, due to the manner of commission or the consequence, custody is necessary for ensuring safety of citizens.

339. When the perpetrator of the criminal offence is a foreign citizen, the same legal regulations are applied to him as to any other perpetrators of criminal offences, respecting his rights arising from the Criminal Procedure Code of District of Brčko B&H, and he is entitled to be acquainted with all the rights, to use his native language, to use his own defence attorney or to get legal assistance free of charge if he cannot afford it. If the custody is ordered for the foreign citizen, he is entitled to have his family or the consular representative of his state informed accordingly. (Article 175 of the Criminal Procedure Code).

340. When there is a grounded suspicion that a person has committed a criminal offence, such a person may be taken into custody on the basis of the regulations of the Criminal procedure Code, under the specifically prescribed conditions. The custody may be ordered only by the order of the judge for preliminary proceedings, and the custody may last for 1 month from the date of arrest. After expiration of this period, the person may remain in custody only on the basis of the decision on extension of custody, and this extended period may last for 2 months.

341. The complaint against the order or extension of custody is submitted to the Court of Appeal within 24 hours from the moment of receipt of the decision. Duration of custody must be the shortest possible necessary period. If the accused is in custody, it is the duty of all authorities participating in the criminal proceedings as well as the bodies providing the legal assistance to act with special urgency. During the entire proceedings, the custody shall be abolished as soon as the reasons on the basis of which the custody was ordered, cease to exist, and the person in custody shall be, immediately, released.

#### **Article 7**

**As regards article 7, paragraph 3, of the Convention, right to fair treatment at all stages of the proceedings is regulated and is guaranteed by Criminal Procedure Code of BiH**

**Reference is made to regulations of the following articles of Criminal Procedure Code of BiH - articles 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17 and 18**

342. Pursuant to Article II A 2 of the Constitution of the Federation of Bosnia and Herzegovina, all persons in the Federation of B&H enjoy the right to fair criminal proceedings and equality before the law. The regulations prescribed by the Criminal Procedure Code should ensure that no innocent person is convicted, and that the perpetrator should be punished by the sanction according to the law.

343. Article 8 of CPC of the Federation B&H stipulates that it is forbidden to extort any confession or statement from the suspect, accused or any person participating in the proceedings, and the court may not base its decision on the evidence obtained by violation of human rights and freedoms as prescribed by the Constitution and international treaties.

344. Criminal Procedure Code of F B&H, Article 526, stipulates the procedure for extradition of accused and convicted aliens. The procedure is started upon the request of the foreign state, and the evidence of identity, citizenship, criminal offence and extract from the criminal code should be attached to the request.

345. If the proceeding is conducted before the domestic court, the Constitution of RS stipulates that every person is entitled to equal protection of his/her rights in the proceedings before the court or other state authority, and the Criminal procedure Code prescribes the rules of procedure by which it ensures that no innocent person is convicted, and that the guilty person is punished by a sanction under the conditions stipulated by the Criminal Code on the basis of the legally conducted proceedings.

346. The court is obliged to conduct the proceedings without delay and to prevent any abuse of rights belonging to the persons participating in the proceedings. According to the Criminal Procedure Code of Republika Srpska, if the court finds that legal prerequisites for extradition of an alien are not fulfilled, it shall make a decision to reject the request for extradition. The legally valid decision by which the request for extradition is rejected must be submitted to the foreign state and, thus, the procedure is completed.

347. Article 44, paragraph 2 of the Constitution of Republika Srpska guarantees foreign citizens and persons without citizenship to obtain the asylum in Republika Srpska if they are persecuted for participating in the movements for social and national liberation, for advocating democracy, human rights and fundamental freedoms or freedom of scientific and artistic creation.

348. In case the request for the asylum is rejected or in case of some other reasons, the proceedings against an alien are possible in our country, but the proceedings cannot be conducted for political or military criminal offences, and it is conducted according to the regulations of the domestic law regulations, and legal and fair trial is guaranteed.

349. The proceedings and the rights during the proceedings are stipulated by the Criminal Procedure Code of District of Brčko B&H. The procedure of extradition is supervised by the court and carried out through the authorised institutions of Bosnia and Herzegovina according to the provisions of international treaties and Conventions on Extradition.

### **Article 8**

350. Considering that, from 1992 to mid of 2003, Bosnia and Herzegovina entered into the Treaty on Extradition only with the Republic of Slovenia (which has not entered into force so far), and that this treaty stipulates extradition for all criminal offences that can be interpreted in the article 4 of the Convention against Torture, Bosnia and Herzegovina intends to realise the obligations from the Article 8 of the Convention against torture, in such a manner as to incorporate all criminal offences that can be interpreted in the article 4 of the Convention against torture into the international treaties on extradition which it enters into in future with the states parties of the Convention against Torture.

351. Criminal offences that can be interpreted in the article 4 of the Convention against Torture can be the sufficient basis for extradition of the suspect to the state requesting the extradition irrespective of whether Bosnia and Herzegovina has or has not a treaty on extradition with that state.

352. The procedure of extradition of the accused and convicted persons is prescribed by the Criminal Procedure Code and is carried out according to the regulations of that Code, if not otherwise stipulated by the law of Bosnia and Herzegovina or international treaty - article 506.

353. There were no cases of extradition for criminal offences of torture or similar criminal offences. The stated issues should be stipulated by the law regulations of District of Brčko, or should be harmonised with the laws of Bosnia and Herzegovina.

354. Criminal Procedure Code stipulates the procedure for extradition of the accused and convicted persons if not otherwise stipulated by the international treaty. The procedure for providing international legal assistance is stipulated by the Criminal Procedure Code (Chapter thirty). International criminal assistance is performed according to the regulations of this code, if not otherwise stipulated by the international treaty.

355. Bilateral treaty on extradition signed in April 2002 in Sarajevo between Bosnia and Herzegovina and Republic of Slovenia has not yet entered into force since the process of ratification is under way. Other bilateral treaties in the field of international criminal-legal assistance which enable extradition between Bosnia and Herzegovina and these states were taken over from former SFR Yugoslavia, and these states are: Albania, Algeria, Austria, Belgium, Bulgaria, Czech Republic, Slovakia, France, Netherlands, USA, Italy, Cyprus, Hungary, Mongolia, Germany, Poland, Romania, Spain, Switzerland, Turkey, Sweden, Great Britain. Up to this date there have not been any cases of direct application of the Convention in Bosnia and Herzegovina. To execute extradition, Bosnia and Herzegovina does not take it as a condition to have the treaty on extradition.

#### **Article 9**

356. Relinquishing criminal prosecution to a foreign state (Article 412), taking charge of criminal prosecution by a foreign state (Article 413) and the procedure of extradition (Articles 414 to 427) already stipulated by the Criminal Procedure Code B&H is already reported in the chapters referring to article 6 and 7 of the Convention against torture. Regarding the procedure for supply of international legal assistance, this is stipulated in the articles from 407 to 413 of Criminal Procedure Code of B&H, taking into consideration previously mentioned relinquishing criminal prosecution to a foreign state (Article 412), and taking charge of criminal prosecution by a foreign state (Article 413).

#### **Procedure to render international legal aid and to enforce international agreements, United Nations criminal matters**

#### **Reference is made to regulations of Criminal Procedure Code of BiH - articles 407, 408, 409, 410, 411, 412 and 413**

357. The procedure of providing international legal assistance and implementation of international treaties in the criminal-legal matters is stipulated by Criminal procedure Code. International criminal-legal assistance is carried out according to the provisions of the stated law, if not otherwise stipulated by the law of Bosnia and Herzegovina or an international treaty.

358. Criminal Procedure Code of Republika Srpska (Chapter XXX), Article 517 stipulates the procedure of supply of international legal assistance and execution of international treaties in criminal matters. International criminal-legal assistance is supplied according to the provisions of the criminal procedure code if not otherwise stipulated by the international treaty.

359. International legal assistance in criminal cases refers to legal assistance in performing the process or some other actions upon the request of the court i.e. some other authority. Legal assistance may be required by our courts from the authorities of a foreign state or foreign authorities may request the same from our courts.

360. The persons enjoying asylum in our state may not be extradited and the investigative actions may not be taken against them. Extradition is also not allowed for political or military criminal offences or the activities referring to those offences upon the foreign request. Domestic courts shall not act according to the foreign request by which it is required to execute the punishment imposed by a foreign court.

361. International legal assistance may be contractual, legal or, in absence of international treaties and legal regulations, in principle, it is based on reciprocity. The requests of domestic courts for legal assistance in criminal cases, are submitted to foreign authorities via diplomatic channels, and the requests of foreign authorities for legal assistance are submitted in the same manner to domestic courts.

362. Criminal Procedure Code of District of Brčko B&H (Chapter 30) Article 407 stipulates the procedure of supply of international assistance and execution of international treaties in criminal-legal matters. Requests for legal assistance of the courts of District of Brčko, i.e. the public prosecutor are submitted to foreign authorities via diplomatic channels in such a manner that the courts submit the requests to the judiciary commission of District of Brčko which submits them further to the Ministry of B&H in charge.

363. When the Judiciary Commission of District of Brčko receives the request for legal assistance of the foreign authority via Ministry of B&H in charge, it is obliged to submit it to the judge or a prosecutor immediately. The court, i.e. the prosecutor decides about the actions being the subject of the request, according to the laws of Bosnia and Herzegovina and their responsibilities.

364. The court shall not act upon the request of the foreign authority by which the execution of punishment of the foreign court is requested, except when it is stipulated by a treaty between the states or the sanction is imposed according to the legislature of District of Brčko.

#### **Article 10**

365. Civil personnel under the responsibility of the institutions of Bosnia and Herzegovina (e.g. the officials of the Court of Bosnia and Herzegovina, Prosecutor's Office of Bosnia and Herzegovina, State Border Service of Bosnia and Herzegovina), are acquainted with the obligations on prohibition of torturing the arrested, detained or imprisoned persons, through valid regulations.

366. Medical and military personnel that can come into contact with the arrested, detained or imprisoned persons, is not under the responsibility of the institutions of B&H, so that

acquainting and informing such personnel about the obligations of prohibition of torturing of the arrested, detained or imprisoned persons is performed by the authorities in the entities and District of Brčko of Bosnia and Herzegovina.

367. It is forbidden to extort a confession or any other statement from the suspect, accused or any other person participating in the criminal proceedings. (Article 8, paragraph 1 of Criminal procedure Code).

368. Important attention is paid to the personnel employed at prisons in the Federation of B&H, from selection of personnel in employment, to their nomination to head positions. Preference is given to qualification, professional knowledge, humanism and personal attributes desirable for performing such a job. Strict selection of personnel is especially present in employing the prison police officers - guards and in employing professional personnel as educators in the reformatory department. Training and professional education of the personnel employed in prisons in the Federation B&H is carried out at several levels.

369. Pursuant to Article 125, paragraph 5, and the Article 141, paragraph 2 of the Law on Execution of Criminal Sanctions in the Federation B&H, the Federal Minister of Justice passed the by-laws on taking the examination of vocational ability of the officials and prison police officers - guards in the Federal institutions for execution of imprisonment. It was published (Official Gazette of the Federation B&H NR 24/99, hereinafter referred to as by-laws I) and it stipulates the conditions, programme and manner of taking the examination of vocational ability of the officials working as educators of the convicted persons, and the officials working as security (including the prison police officers - guards) as well as the manner of organising the practical training of the interns - guards in the Federal institutions for execution of imprisonment.

370. Within the period between 1996 to June 2003 all those who worked on treatment and security of the convicted persons, meaning 475 persons, passed the examination of vocational ability. It should be mentioned that 96 of these were sent to makeup examination in one or two subjects, and 16 failed the examination of vocational ability and lost their right to work in the prisons of the Federation B&H. All those who had been previously employed had already passed the examination of vocational ability.

371. According to the Article 4 of the by-laws the examination of vocational ability includes the following subjects:

- (a) The basics of the constitutional system with the basics of administration in the Federation B&H;
- (b) Labour relations;
- (c) The basics of criminal law and criminal procedure;
- (d) The system of execution of the punishments in F B&H;
- (e) Rules on performing the guard service;
- (f) The basics of penology with the basics of penological pedagogy of adults;
- (g) The basics of personality psychology with the basics of psychopathology.

372. At other levels of professional training the prison police officers - guards are trained, where they gain the title of the guard supervisor and the title of the commander of guards. They have the same subjects, but the knowledge required from the employees is much broader. Federal Minister of Justice has also passed the programme of examination of vocational ability for the educators and prison police officers - guards in the Federal institutions for execution of punishment and this programme was also published (Official Gazette of Federation B&H NR 24/99).

373. The programme of examination of vocational ability of the educators and the examination of vocational ability of prison police officers - guards employed in the Federal institutions for execution of imprisonment has not separately stipulated learning about the Conventions against torture and Other Cruel, Inhuman and Degrading Punishment and Treatment, although the elements of the conventions are studied within the subjects that have been included in the programme. Our opinion is that it is not sufficient.

374. The programme of permanent professional training of the employees in prisons in Federation of Bosnia and Herzegovina after they pass the examination of vocational ability has not been passed. Since 1996 the personnel employed in prisons in the territory of Federation of B&H went through training several times through round tables, seminars and forums organised by the Association for Penology of Federation of B&H, and they gained professional knowledge in the field of employing the convicted persons, awarding and manner of using the benefits of convicted persons, correct implementation of treatment etc.

375. This Association for Penology of Federation B&H issues the "Bulletin" that directly deals with the issues referring to execution of imprisonment in Federation B&H, and it also follows the contemporary world accomplishments in this field. Besides these activities, within the past years, the prison police - guards were trained about prison system and rules for training the prison personnel according to the project of the United Nations called CPCJD/DDSMS.

376. In organisation of OSCE, in May 2003 the round table was organised about the topic: "Education of prison personnel" in order to establish the educational centres in B&H. In co-operation with the SE Office in Sarajevo and the Management Group VE for reformation of prison system in B&H, serious efforts are made to pass the unique programme of training of prison personnel.

377. Our opinion is that the programme of professional education and training of prison personnel should be extended to medical personnel and professional instructors who spend much time in contacts with the convicted persons and have direct influence on correct implementation of treatment.

378. Except for very narrow examination of professional knowledge, personnel employed in other services within prison institutions have no other form of education. In all prison institutions in Federation B&H the employees have sufficient number of laws at their disposal as well as Minimal Rules of United Nations on treatment of prisoners. There are also enough European prison rules.

379. Helsinki Committee for Human Rights in B&H, in its report on condition of prison institutions in B&H (NR 01-01/02), on page 16, states: “Administration and personnel in prison institutions are acquainted with the international standards stipulating treatment of prisoners serving the sentence, to the satisfactory extent ...”.

380. Ombudsmen for human rights in B&H carried out the inspection of some prisons in Federation of Bosnia and Herzegovina and Republika Srpska in April 2002 and in the “Report on Performed Inspection” (NR 1372/02), on the page 6, they state: “under the given circumstances the administrations of both prisons make the best efforts to provide decent living conditions to prisoners”. Criminal Procedure Code stipulates that it is forbidden and punishable to extort confession or any other statement from the accused or some other person participating in the proceedings, and the Criminal Code defines the extortion of a statement as a separate criminal offence. (Article 348 CC RS).

381. The conditions in which the convicted persons serve their sentence and the accessory facilities are not at the level of the desirable or legally prescribed norms. However, in spite of all the problems and difficulties (in personnel, material, space, functional ones and others) that the administration faces in its work, it can be said that favourable psycho-social atmosphere has been created in all prison institutions, that there is tolerance, co-operation and understanding between the prison personnel and convicted persons.

382. In modern prison systems, and in the prison system of Republika Srpska the importance of work performed by the prison personnel at all levels is very much expressed both for managing the prisons as well as for carrying out the treatment. Important attention is paid to the personnel employed at prisons in the Federation of B&H, from selection of personnel in employment, to their nomination to head positions. Preference is given to honesty, professional ability, professional knowledge, humanism and personal ability to adjust for performing such a job. Strict selection of personnel is especially present in employing the prison police officers - guards and professional staff for reformatory department.

383. Article 53 of the Law on Execution Criminal and Minor Sanctions obliges the employees in prisons to permanent education and professional training at work according to the programme stipulated by the Minister of Justice of RS.

384. The programme of professional training of the employees at the level of all prison institutions has not been passed, but there is a programme of training of the officers - guards and the programme of taking the examination of vocational ability of the employees of reformatory department. In co-operation with SE Office in Sarajevo and the Management Group VE for reformation of the prison system in B&H, serious efforts are made to pass the unique training programme for prison personnel. In May 2003 in co-organisation of the Ministry of Justice of RS and the Office VE in Sarajevo, there was a round table on the topic “European Prison Rules - Their Practical Implementation in Prison Institutions in B&H - focus on prisons in RS”.

385. The participants of the round table were eminent professionals, experts in international law and in the field of execution of sanctions from England, Scotland, Slovenia and Sweden. Realisation of the made conclusions is expected in the period to come: establishing the service for training and development of prison personnel.



386. As a rule, the employees in these institutions are full time employees and with the appropriate level of education required by the nature of the work they do. In some institutions not sufficient number of highly educated professional personnel is employed in various specialities (psychologists, pedagogues, psychiatrists etc.) which directly reflects to quality of work with convicted persons.

387. An expert in penology in prison institution (educator, guard, instructor) irrespective of the job position, has a wide scope of activities if he understands his function. Through the programme of training, prison personnel gain new knowledge, discover their own need and show to what extent he is or can be a human being, proving his professional abilities.

388. The only programme of organised education and professional training of prison personnel implemented in prison institutions in RS is a programme of education of newly employed interns for the profession of a guard. Through training for taking the examination of vocational abilities they gain certain knowledge in the field of penology, pedagogy, psychology, law on execution of sanctions and misdemeanours sanctions as well as rules of performing the guarding service, rules on using the methods of compulsion and other regulations relating to work of the service.

389. In studying these subjects the guards are acquainted with the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment. After taking the examination of vocational abilities the guards work on maintaining of their physical fitness according to the programme passed by each institution. The commanding staff of the guards also take the examination. Over 98% of the guards passed the examination.

390. The level of technical equipment of the guards is very poor: the lacking material is: modern means of communication, equipment for supervision, control and securing the facilities as well as technical equipment for discovering drugs. Much of financial funds are necessary for technical equipment.

391. The employees of the reformatory department (educators, psychologists and social workers) are obliged to take the examination of vocational abilities according to the programme passed by the Minister of Justice of RS. The Reformatory department plans, programs, organises and realises the process of reformation of the convicted and juvenile persons and for this purpose it co-ordinates the activities of other services. In its work they apply modern educational, penological and adult pedagogic forms, methods and contents of work, enrich and improve them. The programme of taking the examination of vocational abilities mostly includes these disciplines. The lack of continuous professional training and insufficient number of workers characterise the present status in the reformatory departments in prison institutions of RS. Not all the employees in charge of reformation passed the examination of vocational abilities, although they satisfy all requirements prescribed by the law. This obligation will be realised in the forthcoming period.

392. Except for very narrow examination of professional knowledge, personnel employed in other services within prison institutions have no other form of education or learning about the legal regulations and by-laws. Personal incentive and interest of individuals compensates, to a certain extent, the lack of organised training in the field of regulations they meet on daily basis. In all prison institutions in RS the employees have sufficient number of laws at their disposal as

well as Minimal Rules of United Nations on treatment of prisoners, European prison rules, European Convention on Human Rights and Freedoms and other regulations. When the service for training and development is established all categories of employees in prison institutions of RS will be included.

393. Helsinki Committee for Human Rights in B&H, in its report on condition of prison institutions in B&H (NR 01-01/02), states: “Administration and personnel in prison institutions are acquainted with the international standards stipulating treatment of prisoners serving the sentence, to the satisfactory extent ...” (page 16 of the report).

394. Ombudsman for human rights in B&H carried out the inspection of prisons in Zenica and Foča/Srbinje on 25th and 26th April 2002 and states: “under the given circumstances the administrations of both prisons make the best efforts to provide decent living conditions to prisoners”. (page 6 of the report).

395. We consider that, besides humane treatment and behaviour of the prison personnel with the imprisoned persons, the favourable psycho-social atmosphere is also supported by a relatively small number of the convicted persons in one institution because of which we may state that smaller institutions are more functional and more efficient.

396. Education and informing in relation to prohibition of torturing is the integral part of training of the police. Training and education at the Police Academy about prohibition of torturing and other cruel, inhuman and degrading treatment and punishment is implemented at all levels of education at this institution since it was established, i.e. since 1988. All generations of students of the Police Academy went through the education about the Convention on prohibition of torture and other cruel, inhuman and degrading treatment and punishment whose contents are incorporated into several subjects. Besides the subject “Human Rights” where the Convention is incorporated into a curriculum of the basic training, it is also studied within the subjects “Police business and code of conduct”, “Criminal Science” and the legislative group of subjects, especially criminal law.

397. In the field of respect of human rights the police officers of judicial police of F B&H and the interns (150) were trained at this Academy and went through seven training courses to review their knowledge. The basic training lasting for one year was attended by approximately 1,000 police officers and about 350 judicial police officers.

398. In this field, also education of all employees of the police in Federation B&H was carried out by the mission of UN, IPTF and Office for Human Rights. Ministry of Interior of Republika Srpska takes care of schooling, professional training and education of the employees through High School of Interior and Police Academy.

399. In these educational institutions, subjects referring to performing the police tasks and legal and correct conduct of the police in specific situations are studied. Convention against torture, and other cruel, inhuman and degrading treatment and punishment is included in the curriculum and studied within the subjects on legislation and police subjects such as: Organisation and competence of the police, Police tactics, Criminal science, Criminal law, Human Rights and Dignity.

400. Education and informing of the official personnel in connection with prohibition of torture during interrogation or during the procedure of arrest, taking a person into custody, is carried out through education and professional training of the police officers of District of Brčko.

401. In their conduct, the official persons are obliged to observe the regulations of the Criminal Procedure Code, Law on Execution of Sanctions, and a special emphasis is given to training of official persons at work and their conduct with the persons against whom the custody and detention is ordered. The education about conduct of the official personnel with legally convicted persons in the territory of District of Brčko B&H is not carried out because in the territory of District of Brčko there are no institutions for serving the time sentence.

402. According to the available data, upon the order of the Basic Court in District of Brčko B&H, 37 persons are serving their time sentences, i.e. 16 persons in the institutions of RS and 21 person in the institutions of F B&H. The Association for rehabilitation of the victims of torture - Centre for victims of torture is a non-governmental organisation dealing with rehabilitation of the victims of torture, prevention of torture, education about torture and investigation. Within its preventive and educational activities the Association - Centre for victims of torture held 8 educational seminars in the period from 1999 to 2003.

403. Six educational seminars on the topic: "Torture and Rehabilitation" for professionals from the official health system of B&H (medical doctors, nurses, psychologists, social workers and other personnel), professionals and para-professionals from the non-governmental organisations, were held:

November 1999 - Psychiatric clinic of the Clinic Centre Ko{evo in Sarajevo (37 participants);

December 1999 - Health Centre "Vrazova" in Sarajevo (31 participants);

September 2000 - Gora`de (30 participants);

October 2000 - Travnik (28 participants);

November 2000 - Mostar (30 participants);

October 2002 - Tuzla (33 participants).

404. Two educational seminars "Torture, prevention and rehabilitation of the victims of torture" were held at the Police Academy in Sarajevo.

March 2003 - Professors of the Police Academy in Sarajevo (16 participants);

May 2003 - Cadets of the Police Academy in Sarajevo (103 participants).

405. The lectures within the seminar were given by 4 lecturers of the Association - Centre. After lectures discussion groups were held to exchange the experience and improve professional practices of the participants.

406. After the seminars the participants were filling in the evaluation form thus evaluating the quality and applicability of the seminar. The results of evaluation of these seminars are presented in Table 1 (appendix 1). As it can be seen from the Table, the participants of all the seminars were, to a great extent, satisfied with the held seminars. The highest result was achieved with medical professionals in Gora`de and professors of the Police Academy in Sarajevo where almost all the participants were very satisfied with the held seminars that fulfilled their expectations and the participation in discussion groups was very useful.

407. Slightly lower results were achieved with cadets of the Police Academy in Sarajevo and medical professionals in Travnik where some of the participants mostly or completely were dissatisfied with the seminars or were moderately satisfied. In the descriptive part of the evaluation some recommendations and remarks were given about the held seminars. Table 2 (Appendix 2) presents some of these answers.

### **Article 11**

408. As Criminal Code of Bosnia and Herzegovina entered into force on 1.3.2003 so that the Court of Bosnia and Herzegovina as the institution of Bosnia and Herzegovina, only starting from that date, has been able to take into custody or imprison the persons upon its own decisions, until that date, all these issues used to be stipulated solely by the regulations of the authorities in the entities of Bosnia and Herzegovina and District of Brčko B&H.

409. Issues of the custody and treatment of persons subjected to any form of arrest, detention or imprisonment are regulated by Criminal Procedure Code of BiH, Articles 138, 139, 140, 141, 142, 143 and 144.

410. Convicted persons are obliged to observe the provisions of the Code, by-laws on house rules of the Prison and other regulations referring to execution of the sanction of imprisonment in the territory of Federation BiH as well as to act according to legal orders of the official persons. Order and discipline in prison are maintained in order to achieve the purpose of punishment and reform the convicted persons, and for security of the institutions and collective life of the convicted persons serving their time sentence there.

411. The purpose of execution of imprisonment can be achieved only in the conditions of maintaining the order and discipline. For this purpose, the rights, duties and benefits of the convicted persons are established. In case that the discipline cannot be ensured in such institutions, the law stipulates that the convicted persons can undergo disciplinary responsibilities for disciplinary infringement, which can be slight or severe. For slight disciplinary violations the convicted persons may be punished by reprimand or public reprimand, and for more severe violations it can be a fine (in the amount of 15% of the average monthly pay for the work of the convicted person for the previous month in the institution), or solitary confinement up to 20 days. The most frequent violations committed by the convicted persons are: abuse of benefits, consuming alcohol, fight, racketeering, violent behaviour and usage of non-permitted things.

412. Besides the riots that take place from time to time, starvation strikes and self-injuring are the most frequent form of expressing dissatisfaction of the convicted persons or detainees in the prison institutions. Starvation strikes mostly last between 2 and 7 days, and only exceptionally,

they last longer - in one case it was starvation strike which lasted for 27 days when the person in custody was fed medically (in half-open prison Tomislavgrad - Department Busovača, in 2001). The most frequent method of self-injuring is low vein cutting or swallowing different things. In all cases the owing to timely medical intervention the more severe consequences were avoided.

413. The disciplinary commission appointed by the head of the institution conducts disciplinary proceedings and imposes the punishment. It makes the first-instance decision. The convicted person has the possibility to complain to the head of the institution who makes the second-instance decision and it is final and binding, so that the administrative dispute cannot be conducted. The institution may order the measure of solitary confinement for the period of 1/6 of the imposed punishment against the convicted persons whose actions are a serious danger for security of persons and property, provided that solitary confinement may not last without interruptions longer than three months. For this measure the prison institution must request the approval of Federal Ministry of Justice. By-laws on conditions and method of execution of solitary confinement and the measures decided by the Federal Minister of Justice were published in the Official Gazette of B&H NR 15/99.

414. Within the period from 1996 to June 2003 it is clear that the number of disciplinary violations of the convicted persons in Federation B&H was great and shows the tendency of increase from year to year following the number of convicted persons serving their time sentence in prisons. The most frequent form of disciplinary punishment imposed by the disciplinary commission is solitary confinement. Before being isolated, the convicted may not be sent to solitary confinement until he is examined by a medical doctor who confirms good health condition in writing. The medical doctor and the educator visit the convicted person in solitary confinement room on daily basis, and the head of the institution does that once a week.

415. It should be emphasised that more disciplinary punishments were imposed at the time when there were strikes or riots in prison institutions. Within the period between 1996 and 30.06.2003 three serious riots of the convicted persons took place when the convicted person organised themselves to request reduction of punishment by imprisonment by pardon or application of amnesty and on that occasion (9.3.1996) 120 convicted persons started the starvation strike. The most severe disturbing of security in 1996 happened in September after which the media differently published and broadcast the Decision on Pardon made by Presidency of B&H and which said that the punishment of the convicted persons is reduced for 1/3 of the remaining time sentence, and not of the overall time sentence as requested by the convicted persons. On that occasion there occurred a great material damage as a consequence of a great level of destructive behaviour of the convicted persons.

416. Two hundred convicted persons gathered in the riot that happened at the sports field in closed-type prison in Zenica on 29.08.2001. On that occasion they requested amnesty and pardon and more paroles, and they also requested from the prison institution to reduce the number of disciplinary punishments, better living conditions, more benefits to move outside the prison and greater degree of employment of the convicted persons.

417. The greatest riot happened on 11.2.2003 when 240 convicted persons went on the roofs of prison and with much destruction and violent activities they requested pardon and amnesty. Great material damage was made and it amounted to more than 300.000 KM. It is important to

mention that after this riot which ended peaceably, 56 convicted persons were separated of which 26 were transferred to other prison institutions and 30 were placed to disciplinary department. Of this number, 24 convicted persons were punished by the disciplinary measure of solitary confinement up to 90 days and it was approved by the Ministry of Justice. Force was not used, but also there were no injured convicted persons.

418. The convicted persons are obliged to observe the regulations of the law, house rules and other regulations in the field of serving the time sentence and to act according to the lawful orders of the official persons (Article 162, paragraph 2 of the Law on Execution of Criminal Sanctions and Minor Sanctions). Disciplinary measures are stipulated for behaviour that contradicts the house rules. Which violations are the disciplinary violations is more closely stipulated in the by-laws on house rules, and the way to conduct the disciplinary proceedings is stipulated by the by-laws of disciplinary liability which are passed by the Minister of Justice of RS. "Collective punishment, physical punishment and punishment of solitary confinement in dark rooms as well as other cruel, inhuman or degrading punishments may not be executed in disciplinary punishment" (Article 163, paragraph 2 of the Law on Execution of Criminal and Misdemeanours Sanctions).

419. The law prescribes the obligation of the convicted persons to obey the provisions of the Law on Execution of Criminal Sanctions and Minor Sanctions, house rules of the institution and other regulations in the field of execution the time sentence and to act according to the lawful orders of the official persons. Order and discipline are maintained in the interest of security of the institution, realisation of the purpose of the criminal sanctions, collective living and the objectives of reformatory process.

420. The law defines a large scale of minor and more severe disciplinary violations. What is specific for the disciplinary proceedings in Republika Srpska and what makes them more democratic compared to other systems is two-instance decision making and the possibility of the convicted person who is disciplinary punished by the prison administration, to complain to the Ministry of Justice which, in the second instance, decides upon the complaint of the convicted person. The convicted person is given the opportunity to present his defence either himself or with the assistance of a defence attorney whom he can engage from the open list of the attorneys. Other issues not stipulated by the law regarding disciplinary liability, are stipulated by by-laws on disciplinary liability of the convicted persons.

### Review of pronounced disciplinary punishments

Year	Number of disciplinary proceedings against convicted persons	Disciplinary punishment				
		Reprimand	Abolished benefits	Solitary confinement	Suspended solitary confinement	Freed
1996	121	14	8	77	17	5
1997	155	21	12	103	16	3
1998	172	19	27	82	21	23
1999	169	23	25	82	34	5
2000	192	39	37	84	17	15
2001	221	44	31	115	19	12
2002	208	27	29	98	17	37
2003	75	10	19	26	11	9
(30.6)						
Total	1 313	197	188	667	153	109

421. Above data clearly show that the number of disciplinary violations of the convicted persons is great and that it has the tendency to rise from year to year, following the rise of the number of convicted persons serving their time sentence. The most frequent disciplinary punishment is solitary confinement and it amounts to 50,7% of the total number of pronounced punishments.

422. Committal to solitary confinement room is pronounced only for the most severe violations, and before being isolated, the convicted may not be sent to solitary confinement until he is examined by a medical doctor who confirms good health condition in writing. This disciplinary punishment may not last longer than 30 days without interruptions, and during the year it may not last longer than 6 months. The medical doctor visits the convicted person in solitary confinement room every day, the educator at least twice a week, and the head of the institution does it once a week.

423. The disciplinary punishment of solitary confinement is always stopped if, according to the written opinion of a medical doctor, further stay of the convicted in solitary confinement jeopardises his health (Article 173, paragraph 2 of the Law on execution of sanctions). The measure of solitary confinement for the period not longer than 6 months may be imposed against the convicted person whose actions are a serious danger for the security of others and property of a prison institution (Article 175 of the law on execution of sanctions). This measure was pronounced against two persons who used explosive means to try to escape from prison, and thus jeopardised both the convicted persons and the official persons. One of the participants was punished by imprisonment for a term of 2 years and 6 months for this incident and for causing the general emergency situation.

424. By-laws on methods and conditions of execution of disciplinary punishment of stay in solitary confinement room and measure of solitary confinement was passed by the Minister of Justice of RS (Official Gazette of RS NR 65/02 dated 17.10.2002). The most frequent disciplinary violations were: abuse of benefits (being late for more than 24 hours, consuming alcohol, not returning to the institution), fights, violent behaviour, using non-permitted things etc. Disciplinary proceedings are explained in the item 28 of this report.

425. Within the period being the subject of this report there were 4 riots (strikes) of the convicted persons in the prison institutions of RS: in prison Foča/Srbinje in 1998 where 80 convicted persons participated and in prison Banja Luka - about 70 convicted persons. The strike of the convicted persons in 1998 included refusing to take the food and refusing to perform the working duties, and the requests of the strikers were: partial amnesty for all convicted persons. After negotiations with the Ministry of Justice and the promise that the request would be submitted to the authorities in charge, the strike ended. Due to destructive behaviour before and during the strike, 4 convicted persons were transferred to other prisons.

426. The strike was also organised in 2001 with the same requests and in the same manner in prison Foča/Srbinje and there were 95 participants. Some of the requests in comparison with the previous requests, were more radical so in the negotiations with the Minister of Justice the organisers were informed about all possible consequences in case of disorders. The strike ended peaceably without using force or disciplinary proceedings.

427. In prison Banja Luka, department of investigation, 3 persons were imprisoned on 2.6.1999 because they made barricades in the room, burnt the mattress and bed linen. Because of lack of oxygen, after 50 minutes the persons that were in custody surrendered and stopped the riot. In extinguishing the fire, one of the guards was slightly injured. Force was not used against the detainees. According to the statements of the detainees, the reasons for barricades was their dissatisfaction with work of the judicial authorities.

428. In other prison institutions in RS there were no organised riots except for individual solidarity with the requests of the strikers. The representatives of UN, IPTF and OHR were informed about these events and they took active part in resolving them.

429. Besides organised riots, the most frequent forms to express dissatisfaction with the decisions of authorities and institutions are starvation strikes and self-injuring. Within the period covered by the report there were 53 cases of individual refusal of food by the convicted persons and 137 detainees. They lasted from 3 to 15 days and in 5 cases medical measures were taken because the health of the strikers, on the basis of the medical indications, was jeopardised. The most frequent method of self-injuring manifested in cutting veins and swallowing the solid things. Timely medical interventions prevented more severe consequences. Within the period covered by this report there were 59 such cases.

430. In the same period three suicides were committed by the convicted persons and two suicides of the detainees. All five suicides were committed by hanging. The competent judicial-police commissions carried out the investigation at the crime scene of each of these five suicides. The most frequent reasons for refusing food and self-injuring are dissatisfaction because of ordering custody, pronouncing the verdict, refusal of benefits, delay in criminal procedure etc.

431. The law stipulates the possibility to apply special measures against the convicted person when there is a danger of escape, violent behaviour against other persons or property, danger of suicide or self-injuring or disturbing discipline and order, which cannot be eliminated in some other way. Special measures include:

(a) More intense supervision which means more frequent watching and control of the convicted person by day and night and it is performed in such a manner not to disturb daily activities of the convicted persons;

(b) Taking away and temporary forfeiture of things which are allowed, and this lasts for a temporary period and is applied very rarely;

(c) Accommodation in a special room without dangerous things; this measure may last not longer than 48 hours and it is executed after the medical doctor gives positive opinion as regards to the ability of the convicted person to stay in the special room;

(d) Accommodation at the department with maximum security and intense programme of treatment and this may be imposed only in the prisons of closed-type;

(e) Using handcuffs for tying, and tying the legs if necessary as a special measure may last not longer than 12 hours during 24 hour period;



(f) Solitary confinement as a special measure is rarely applied and it is ordered by the Minister upon the proposal of the head of the institution, and its maximum is 6 months;

(g) Testing to infectious diseases and drugs is applied in case when there is a suspicion to infectious diseases or taking drugs when blood and urine taking is necessary for the tests.

432. Besides the special measures also force may be used against the convicted persons when it is necessary to prevent:

(a) Escape;

(b) Physical attack against the employee of the institution, other convicted or some other person;

(c) Injuring the others, self-injuring;

(d) Deliberate causing material damage;

(e) When it is necessary to prevent or defeat active or passive resistance of the convicted person.

433. The law precisely enumerates which methods of compulsion against the convicted person and they are ranked in the following order: moves necessary for arrest and defence, body power, rubber baton, water cannons, chemicals and firearms. While using the methods of compulsion the official person is obliged to use such a method which is least endangering the health and life of the individual but which successfully defeats resistance and is proportional to the threatening danger. Minister of Justice of RS passed closer regulations about using methods of compulsion.

See Table No. 13 - Table summary of the Report

434. The most frequent forms of methods of compulsion were body power 29 and rubber baton 33 times, and they were most often used in preventing the fight among the convicted persons, active resistance to official person, prevention of attack against the guard, prevention of self-injuring, taking the convicted persons who were alcoholised to prison from outside working sites.

435. The law precisely stipulates the conditions that must be fulfilled for usage of firearms by the official person, so it states as follows:

(a) There must exist the illegal and simultaneous attack which jeopardises the life of the convicted person, employees and other persons being in the institution at the moment;

(b) For preventing the escape of convicted persons from the institution while fleeing over the outside wall and there are no other means to prevent the escape;

(c) To prevent the escape of a convicted person while being transported only if it is a person convicted for time sentence of five years or more, or

(d) If it is a person in custody against whom the criminal procedure for criminal offences punishable by imprisonment of ten years or more is ongoing;

(e) Water cannons, chemicals and firearms were not used.

436. The institution must report about each usage of methods of compulsion to the Ministry which decides about whether it was justified or not to use methods of compulsion.

437. Among 77 methods of compulsion that were used, 71 were justified, while 6 were unjustified. Disciplinary proceedings were conducted against 6 official persons for exceeding the authority and they were punished by a fine, probation and discharge from service, as prescribed by the law. On the occasion of using the methods of compulsion there were no severe injuries either of the convicted persons or the officials. There were only slight physical injuries.

438. Using the methods of compulsion against the convicted and the detainees is one of the most delicate issues in working in prisons. Therefore, the law obliges the guard to promptly inform the head of the institution about using methods of compulsion, and the head of the institution is obliged to inform the Minister of Justice of RS about using physical power, rubber baton, water cannons, chemicals and firearms, within 24 hours. (Article 182 of the Law on Execution of Criminal and Misdemeanour Sanctions).

439. Article 205 of the Criminal Procedure Code of F B&H stipulates that the supervision of the detainees is performed by the president of the court being authorised for this. The president of the court or a judge authorised by the court is obliged to visit the detainees, at least once a week, and to keep informed about treatment of the detainees and their needs. The president of the court is obliged to take the necessary measures to eliminate irregularities observed in the visit of prison and to directly receive the complaints of the detainees.

440. According to the provisions of the Articles 232 and 233 of the Code, all prison institutions in the Federation B&H are of the half-open type except the prison in Zenica. This categorisation is more a result of wishes and will to create more humane conditions for execution of sanctions, at least formally and in near future, than it is determined by the realistic conditions of execution of sanctions.

441. The prisons are of cell type and they are intended for execution of custody and imprisonment according to the standards of Irish progressive system, characterised by a pavilion type of construction and the principle of collective serving the sentence of imprisonment. The conditions for execution of sentence of imprisonment that would be in compliance with the European standards mostly cannot be followed by the prison institutions. The prisons do not dispose of adequate accommodation capacity (small cells with little natural light without having the accessory facilities, living rooms, facilities for organising the educational activities, workshops for training and employing the convicted persons and the space for organised usage of spare time). In comparison with other prison institutions, slightly more favourable situation regarding accommodation, exists in the V pavilion in Zenica, the farm Kozlovac belonging to the half-open prison Tuzla, and the farm Iliji belonging to half-open prison Mostar, and this partly refers also to the department in Blažuj which belongs to half-open prison Sarajevo.

442. The problem of accommodation of the convicted persons is particularly present at the closed-type prison in Zenica. Within this prison, the convicted male persons serve their time sentence, long-term time sentence and the juvenile imprisonment sentence. In one department of the prison also the time sentence pronounced for misdemeanours is executed. Within this prison there is a department for execution of mandatory psychiatric treatment and custody in medical institution. The problem of execution of imprisonment in this institution is more complex due to the fact that the convicted population is very heterogeneous as to the criterion of age, kind of criminal offences and especially as to some personality characteristics. Capital investments in prison institutions in Federation B&H, within the period from 1996 to 30.6.2003, amounted to more than 5.500.000,00 KM. In 2001 1.200.000,00 KM was invested for this purpose, and in 2002 it amounted to 3.000.000,00 KM.

443. We are of the opinion that this very little given the conditions under which the prisons in Federation B&H function. The Government of Bosnia and Herzegovina was requested to provide more funds for improving the living and working conditions of the convicted and detainees serving their time or are in custody in Federation B&H, but these funds have never been provided in the requested amount.

444. The conditions of accommodation of the detainees are, generally, much worse than the conditions in other European states. The most difficult situation is in the custody department of the half-open prison in Sarajevo. The total capacity of detention department in this prison is 140 beds, and on 30.6.2003 there were 159 detainees. All standards are infringed so that, accommodating the detained persons in such conditions, we can hardly speak about human treatment irrespective of the fact that the personnel are making efforts to treat them according to the law and in humane manner. The only way to resolve this problem is that Sarajevo Canton Court and two Municipal Courts which, shortly before the war and during the war occupied these premises on the basis of the decree of the Government of F B&H, and are still occupying them, be dislocated. In this way the additional 662 square meters would be available for the detained persons. There is a decree on this issue of the Government of F B&H that was passed at the 58th session held on 12.10.2000.

#### **Review of capacities in prisons in the Federation of Bosnia and Herzegovina**

According to standards 4m <sup>2</sup> /1 person	Capacities	
	Occupied on 30.6.2002	Installed capacity
Convicted persons and violators 1 085	1 174	1 308
Detained persons	334	446
Total 1 459	1 508	1 754

445. Total installed and accommodation capacities for the convicted, misdemeanour convicts and detained persons (number of beds) allow maximum of 1459 beds. On 30.6.2003 1508 beds were occupied i.e. 47 beds more than optimum of allowed capacity.

446. Installed accommodation capacities in 2002 were increased compared to past years without significant material investments except for the prisons in Tuzla and Zenica. This, in fact, means that only the number of beds increased to detriment of objective living space in which the convicted, misdemeanour convicts and detained persons live. Such a trend continues.

Regarding execution of imprisonment the overcrowded prisons are the closed-type prison in Zenica and half-open prison in Tuzla, and speaking about the detention units the most difficult situation is in the half-open prison institution in Sarajevo. If we add to this the insufficient number of sanitary units, worn condition of water supply and sewage system installations, worn condition of bathrooms, bad inventories, obsolete equipment used by the prisons, then we can understand the difficulties of serving time in prisons in Federation B&H. These segments (among others) constitute a cause of dissatisfaction of the convicted persons which represents a permanent threat of disorders and riots.

447. At the time of construction of our prison institutions (Zenica, Sarajevo, Mostar and Tuzla), they were suited to the then living standards of convicted and detained persons who were serving time by the principle of collective serving of the sentence. It should be especially emphasised that majority of pavilions at the prison in Zenica, where the convicted persons live and work, were constructed more than a hundred years ago, so that all material resources that are invested in their adaptation and maintenance (although being significant) are almost not seen. These premises are not functional any more and they are not suited to contemporary standards of theory and practice of penology. New construction solutions for these premises comprehend, above all, construction of smaller spaces - cells. That is difficult to be achieved without investing great financial assets, and, by doing this, not to jeopardise static of the existing buildings. All this shows that the only right solution of this problem is to construct completely new buildings. This has been done in the prison institution in Tuzla, department Kozlovac, and the department Ora{je, as well as in closed-type prison institution in Zenica.

**Review of number of convicted persons who were accommodated  
for serving their time sentence at prisons in the Federation of  
Bosnia and Herzegovina**

1996	340
1997	533
1998	467
1999	568
2000	678
2001	965
2002	981

448. It can easily be noted that the number of convicted persons serving their time sentence in Federation B&H is increasing each year (The above stated indices refer to the status on the date 31.12. each year).

449. From 1996 to half of 2003 the number of arrested (detained, convicted and misdemeanours convicted violators who were sentenced to mandatory psychiatric treatment and custody in medical institutions) in the territory of Federation of B&H is ever increasing. For instance, the total number of arrested persons in 1996 was 340, and at the end of 2002 this number amounted to 981 persons, which shows the increase of 641 persons. It should be mentioned that the number of persons who come during the year to serve the sentence is much greater than the number of the persons already serving the sentence at the end of the year. For instance, at the end of 2002 total number of 5337 convicted persons, misdemeanours convicted violators and detained persons passed through the prison institutions in Federation of B&H.

During that year, total number of 1364 persons were received for serving the time, and in 2001 that number amounted to 924. This shows that in 2002, compared to the previous year, 442 more persons were received for serving the time sentence.

450. The law prescribes that each convicted person has a separate bed, bed linen, dry, light, clean and sufficiently ventilated rooms. Sanitary units, according to the legal regulations, enable the convicted persons to normally do their physiological needs whenever necessary, as well as taking a bath and shower at the temperature corresponding the climate conditions, season and geographic conditions, but it must be done at least once a week. The convicted persons have access to clear running water at any time.

451. The problem of accommodation of the persons convicted for misdemeanours is the most difficult in half-open type prison institution in Tuzla where, only in 2000, there were 2166 persons serving the time sentence, which was 56% of the total number of misdemeanour convicts in F B&H. It used to happen that only in one day a full bus of misdemeanour convicts were brought into the institution and it was very hard to provide the adequate accommodation and food for all of them. Therefore, it does not rarely happen that the heads of the institutions agree with the presidents of the courts for misdemeanour offences to temporarily stop acceptance of misdemeanour convicts. This particularly referred to the half-open type prison in Tuzla and half-open prison institution Tomislavgrad, department in Busovača.

452. Regarding accommodation, especially difficult situation is with the female convicted persons who serve time sentence in the Federation of B&H. In spite of the fact that the accommodation capacities exist in the department for women in half-open prison in Tuzla (within the last two years they were enlarged and modernised) they are still insufficient, so it can be said that the educational treatment of the convicted female persons cannot be carried out in that space (especially their working engagement). There must be found a solution to open the prison institution for women where also the juvenile imprisonment of female convicts would be executed.

453. According to the above data, once again we underline that without constructing new accommodation capacities there will be no move forward regarding more favourable accommodation of the convicted persons.

454. The law ensures medical aid and treatment to convicted persons, detained persons and persons convicted for misdemeanours the costs of which are covered by the institution, except in cases of self-injuries (Article 45, paragraphs 1 and 2). This means that during execution of imprisonment the convicted persons have medical protection free of charge, i.e. general and specialist medical examinations, as well as outpatient and hospital treatments. In this, it is completely irrelevant whether the disease of the convicted person, detained person or a person convicted for misdemeanours occurred before arrival in the institution to serve the time sentence.

455. The law also prescribes the right of acquiring the orthopaedic aids (spectacles, hearing devices) in the same manner as for other citizens. Necessary medical measures can be applied to a convicted person in cases when the person refuses food or medicines and thus endangers his life and health, but it is necessary to obtain an approval of the Council of medical doctors.

456. Prison institutions in the Federation of B&H (Zenica, Sarajevo, Tuzla) have employed medical doctors on permanent basis, while in other institutions this personnel as well as the doctors - specialists are engaged on a part time basis. This has proved to be good and rational.

457. The right of the convicted persons in the domain of medical protection is extended in accordance with the Article 47 of the Law whereby the convicted persons are entitled to request the medical check up by a specialist outside the institution where he serves the time sentence, but, in such cases, the costs are borne by the convicted person.

458. Article 46 of the Law stipulates that medical treatment of the convicted persons in the medical institution outside the prison can be available to any convicted or detained person if there is a real need for that. This convenience was used by many persons within the period from 1996 to 30.6.2003. (See the Table).

**Medical treatment of convicted persons, detained persons  
and misdemeanour convicts in the medical institutions  
outside prisons within the period from 1996 to 30 June 2003**

Number	Year	Zenica	Sarajevo	Mostar	Tuzla	Biha }	Busovača	Total
1	1996	16	6	3	3	1	1	30
2	1997	13	13	2	3	1	1	33
3	1998	18	17	8	2	1	0	46
4	1999	23	18	2	7	1	3	54
5	2000	45	23	7	3	2	2	92
6	2001	30	31	3	4	1	1	70
7	2002	53	23	10	8	1	2	97
8	2003	14	9	8	3	1	1	36
Total		221	140	43	33	9	11	458

459. In ensuring medical protection for the convicted persons, the Law especially takes care of pregnant women and women who recently delivered a child. Article 48 of the Law stipulates that such persons are provided with professional medical care, and the child may remain with the mother up to three years of age after which, with the agreement of the mother, the child is accommodated with a family or the authority for social care to take further care of the child.

460. Within this period in prisons of the Federation of B&H there were no persons who suffered from tuberculosis of lungs, but there was a certain number of the convicted who came to serve the time sentence, and after the medical examination (which is mandatory) it was found that they had this disease. They were immediately medically treated. Within this period there were two cases of detained persons and one serving the time sentence who were found to be HIV positive, and one person who had AIDS died.

461. Regarding education of the convicted persons in prisons in Federation of B&H, the Law prescribes that the convicted can gain 8 year elementary school education through organised lectures in the prison. Presently, this is only possible in closed-type prison in Zenica. Prison institutions are obliged to organise eight year schooling for all juvenile persons and younger adults who did not complete their schooling.

462. Besides this education, prisons are also obliged to carry out professional education which is performed according to the regulations for secondary school education. Presently, this is only implemented in the closed-type prison in Zenica where there is practical training for metalworking and catering profiles. To a small extent vocational education of convicted persons is temporarily (for catering profiles) organised at half-open type prison in Tuzla. Vocational training of the convicted persons is carried out in co-operation with the nearest secondary-school centre. After completion of schooling and vocational training the convicted persons obtain certificates which do not show that the education was completed in prison which helps them later in employment. A smaller number of convicted persons serving time sentence is provided an opportunity for external education in secondary, high or university schools.

463. Convicted persons in the closed-type prison in Zenica have access to a library having over 6.500 books, reading room and among the books there is a sufficient number of entertaining texts, professional literature as well as literature written in foreign languages. There is, also, a sufficient number of religious books. Unfortunately, in all other prison institutions in Federation of B&H the libraries are very poor. Prison institutions of half-open type Tomislavgrad, department in Busovača, department in Oražje, department in Ustikolina, as well as half-open prison in Bihać and Mostar have no library at all. In the half-open type prison in Sarajevo there is a library with about 1100 books, but the books are rather devastated. Generally, we can say that the library fund in prison institutions in Federation of B&H is not renewed at all.

464. In all prison institutions in Federation of B&H it is possible to watch TV programme, listen to radio programme, and in the prison in Zenica there is also the internal television. Since 2002 in the detention departments it is also possible to watch TV programme. Internet, which is installed in one department of the prison in Zenica, is not available to convicted and detained persons.

465. Convicted and detained persons are entitled to meet their religious needs while serving time in prisons and detention units, and prisons are obliged to provide the conditions for meeting these needs. For this purpose it is necessary to provide the space, religious servants and literature which is done at the prisons in Zenica and Sarajevo where there are convenient rooms for all three religious confessions. At the prison in Tuzla there is a masjid and the chapels for other two confessions are being built. At the prison in Mostar, there is a chapel, and the space for masjid is expected to be constructed. In other prisons and departments there are no such facilities nor is their construction expected in near future (due to lack of space).

466. House rules at each prison institution more closely stipulate the time for visits of the representatives of religious communities, the time and the place of religious services. The convicted and detained persons are enabled to fast and have food according to precisely determined religious rituals during and shortly before: Christmas, Easter, Good Friday, All Saints' Day and Bairam.

467. Meals of the convicted persons in prison institutions in Federation of B&H are regulated by the Article 44 of the Law which stipulates that the meals are provided in regular time intervals and the food is prepared in meals having quality and quantity that satisfy nutrition and hygienic standards and are appropriate to the age, health and kind of a job performed by a convicted person as well as their cultural and religious requirements. Adult convicted persons are

provided with the meals of least caloric values of 12.500 joules a day, and juvenile persons have 14.500 joules a day. Persons doing hard physical work have 2000 joules more available in the extra meal. All this is stipulated by "By-laws on clothes, footwear, nutrition, disciplinary proceedings, conditions and manner of serving disciplinary punishment of committal to solitary confinement room and measures of solitary confinement of convicted persons in Federal prisons for execution of imprisonment", that was passed by Federal Minister of Justice and was published in the "Official Gazette of Federation B&H" NR 15/99.

468. All prison institutions in Federation of B&H have weekly menu approved by the heads of the institutions and the samples of meals are regularly kept. The prisons have contracts with the nearest hygienic-epidemiological centres which, very often, check caloric value and hygienic-epidemiological condition of food. Technicians and doctors in these prison institutions check the food on daily basis. The food in prison canteens is especially thoroughly checked controlling the shelf life of the food.

469. When preparing food for the convicted persons, detained persons and misdemeanour convicts in prison institutions in the Federation of B&H there are many problems related to preparation following the religious standards. Prison institutions prepare food using vegetable oil and all sorts of meat except pork. In prisons, the convicted persons who consume pork request to have it in some meals (this is a great problem in all prisons, and in the closed-type prison in Zenica a certain number of the convicts requested this food in the strike in 2001. They addressed their requests to the administration of the prison, Federal Ministry of Justice and Human Rights Chamber. Until the end of 2003 this problem will be resolved by opening the separate line for the food to distribute and consume the food prepared on fat and with articles of pork origin. This is already being done in the half-open type prison in Tomislavgrad, department of Busovača. In the canteens of prisons there are enough articles of smoked meat made of pork which the convicted persons, if they wish so, can buy (smoked meat and canned meat).

470. In the territory of Federation of Bosnia and Herzegovina there is no separate medical institution for execution of sentence of mandatory psychiatric treatment or custody in the medical institution. At the end of 1995 and at the beginning of 1996, with the approval of the Federal Ministry of Health a separate department was opened for this purpose at the closed-type prison in Zenica, with the capacity of 30 beds at that time. 75 persons are accommodated in two rooms where there are not even the minimal accommodation or hygienic conditions for stay of this category of the diseased persons. According to the Article 232, paragraphs 2 and 3 of the Law, this department should have been shut down until 1.12.2001 by which time the Federal Ministry of Health should have determined the medical institution for serving this sentence. So far this has not been done, although the conditions in this department are unbearable. These two Ministries are working on this problem. Federal Ministry of Justice and Federal Ministry of Health must urgently determine the medical institution where this sentence will be served. In the Federation of B&H there is not a prison hospital nor is there any indication that it will be established.

471. Although in all prison institutions, except the half-open prison in Tomislavgrad, department of Busovača, and in accordance with the Law on Execution of Criminal Sanctions and the by-laws on internal organisation, there are economic units where the convicted persons are employed. The employment of these persons is a great problem to everybody. The Law underlines that the work of the convicted persons during serving the time sentence should be



useful to match the kind of work at large and to exclude any degrading relationship. Working hours and the rights arising from labour relations are equal to the rights of the employed civilian population. On 31.3.2001 in all prison institutions there were 841 convicted persons and misdemeanour convicts of which 436 were employed. This shows that almost 50% of the convicted in these prisons are not employed, and 100% of the detained persons are not employed. If, from the data relating to 2001, we deduct those convicted persons and misdemeanour convicts who are employed on overhead jobs (kitchen, laundry, cleaning and similar) the number of which was 225, then we can see that the economic units (production plants and farms) employed only 237 persons. If we add to this 7 more persons who worked for the third parties than we can conclude that economic units employ a very small percentage of convicted persons and misdemeanour convicts. This situation is caused by a number of reasons, the important ones of which are: small capacities, old technology, inadequate labour, impossibility to do market business etc.

472. In Republika Srpska three prison institutions were established: Prison in Foča/Srbinje and prison in Banja Luka, as the prisons of closed type, prison Srpsko Sarajevo, being the half-open type prison institution and three district prisons: Bijeljina, Doboј and Trebinje as prisons of closed type. The sentence of life imprisonment and juvenile imprisonment are executed at separate departments in prison in Foča/Srbinje, and the sentence of imprisonment for women and juvenile females is executed at prison institution Srpsko Sarajevo.

473. Life imprisonment was introduced after abolishing death sentence. During the period covered by this report, the courts in Republika Srpska did not pronounce even one life sentence. New Criminal Code that entered into force on 1.7.2003 stipulates long-term imprisonment instead of life sentence, which may not be pronounced to a person who, at the time of committing a criminal offence, was not of the age of 21 or was a pregnant woman.

474. According to the degree of security, degree of restriction of freedom of movement of the convicted persons, as well as applied measures of treatment of such persons, the prisons can be of open type, half-open or closed type.

475. In prison institutions of Republika Srpska there is no institution of open type nor the department because there are no material or space prerequisites for such institutions, i.e. departments. The departments of half-open type exist within the prison institution Foča/Srbinje, with the capacity of 40 convicted persons and the district prisons Doboј and Bijeljina, with the capacity of 10 convicted persons.

476. The Law stipulates that there must exist the centre for observation of personality and establishing the treatment programme which presently functions at the level of admission-release departments where the personality of the convicted persons is observed, treatment programme is established and classification of the convicted persons is performed. After admission, the convicted persons stay at these departments between 3 to 30 days depending on the time sentence they are convicted to. During this period the team processes the convicted persons and it is the multi-disciplinary team consisting of the pedagogue, psychologist, social worker, medical doctor making the diagnosis of his health condition and on the basis of the collected data and performed observation the treatment programme is established.

477. Prison institution also have organised security service consisting of prison guards and they are in charge of securing the institution, rooms and working sites where the arrested persons stay and work: maintenance of internal order and discipline in the institutions, escort jobs and they also do other duties stipulated by the law and by-laws; reformatory service whose task is planning, programming, organising and realisation of the reformatory process of the convicted persons with a special emphasis on steering active participation of the convicted and realisation of educational-training tasks using the stimulation measures and benefits that have positive impact on the process of reformation; health service whose main aim is to take care of Health Care of the arrested persons and control of the quality and quantity of food and water and other hygienic measures applied to the convicted persons; economic training service in charge of organising the work of the convicted persons and implementation of professional training of the convicted persons in order to maintain and improve working abilities for easier inclusion in useful life at large. Present prison institutions in RS are characterised by pavilion type of construction and the principle of collective serving the sentence.

See Table No. 14 - Table summary of the Report

Detention has not been carried out in prison Foča/Srbinje since November 2000.

**Review of number of convicted persons in prisons of RS  
within the period 1 January 1996-30 June 2003**

Year	1996	1997	1998	1999	2000	2001	2002	2003
Prison Banja Luka	342	302	300	330	341	383	378	353
Prison Foča/Srbinje	169	245	311	341	389	446	451	355
Prison Srpsko Sarajevo	62	81	58	93	121	119	130	123
District prison Bijeljina	167	152	168	208	211	267	240	160
District prison Doboj	108	154	127	152	160	170	154	107
District prison Trebinje	-	-	-	-	2	2	4	25
Total	848	934	964	1 124	1 224	1 387	1 357	1 123

478. Above Table shows the tendency of increase of the number of convicted persons who were serving the time sentence in prisons of RS in the period covered by the report. However, in spite of the increase of the number of convicted persons the present accommodation capacities meet the present needs because the Table presents the total number of convicted persons who were at prisons in RS.

479. The time when the prisons in Foča/Srbinje, Prison in Srpsko Sarajevo and District Prison in Doboj were constructed suited the standards of that time and the principles of serving the sentence. The time within last 50 years made them lose their functionality so that they no longer meet the modern standards of theory and practice of penology. If we take into consideration the fact that within the past period very little was invested in these facilities, then their condition, except for one block at prison Foča/Srbinje, is more than satisfactory.

480. Architectural and construction solutions of these facilities, arrangement of bedrooms, windows, sanitary units and other accompanying units is such that it is very difficult to any

reconstruction and building of the cells without serious jeopardising the static of the buildings. Their reconstruction into the cell system would drastically reduce the capacity and produce great costs, i.e. the need to construct the new buildings.

481. District Prison Bijeljina was constructed in a slapdash manner without sufficient understanding of contemporary standards and means to achieve such standards. District Prison Trebinje has much space, but significant financial resources should be invested in its adaptation. The only institution which is close to European prison standards is the prison in Banja Luka, although it is not of a cell type.

482. The Law prescribes the obligation that accommodation of convicted persons should be in compliance with hygienic requirements and local climate conditions. Each convicted person is provided with a separate bed and bed linen, and the living rooms where convicted persons are accommodated must not be damp and must have enough space so that each convicted person disposes of at least 8 cubic meters of space. The windows in the rooms where convicted persons are accommodated must be large enough to make reading and working under natural light possible under normal conditions and to enable entry of fresh air except in cases where air conditioning system is installed.

483. According to the law regulations, sanitary devices should enable convicted persons to do their physiological needs whenever necessary in clean environment as well as to take a bath and shower at the temperature which suits the climate conditions and at intervals necessary to maintain general hygiene in line with a season and geographic circumstances, but at least once a week. A convicted person must, at any time, be provided with pure running water and the rooms where they are accommodated must be kept tidy and clean.

484. All institutions (except District Prison Bijeljina) meet the requirements as to the size of space (8 m<sup>3</sup>) according to the Law and Rules of European Community. At all prisons (except the prison in Foča/Srbinje) heating of premises is provided through central heating systems (own or city boiler houses), sleeping premises (with some exceptions) have sufficient daily light and fresh air, without moisture, and each convicted person has a bed and bed linen which is changed on regular basis, and they have access to sanitary blocks, while the schedule of taking a bath is differently regulated, but each convicted person can take a bath at least once a week. All premises are maintained properly and are cleaned on regular basis which is specified in the house rules and schedule of daily activities of convicted persons.

485. All convicted persons are admitted to prison on the basis of a valid questionnaire and their registering is done properly. All convicted persons have access to laws, regulations, Rules of European Community, Convention on Human Rights and other regulations and they are acquainted with their rights and obligations immediately after arrival to serve their time sentence.

486. Due to lack of financial assets, the convicted persons are not provided with winter clothing and footwear in line with the regulations, while the situation with summer and working clothing is somewhat better. Convicted persons wear their own clothes and shoes in most of the cases.

487. The internal classification among convicted persons differs from institution to institution and is adjusted to their possibilities, structure of convicted persons, and the kind of work they perform. None of the prisons has the premises with the necessary contents for using annual leave in the institution.

488. Irrespective of all the problems which the prisons face, kitchens and dining rooms are in accordance with the valid standards. Each prison has its own specific ways regarding food supply. There is no system of central food supply, but each institution, on the basis of market economy, sells its products and purchases the necessary commodities and equipment according to its financial possibilities. Some of the institutions, producing food on their own farms and economic units, provide a large portion of their needs for food, especially meat, milk, eggs and vegetables. The food is regularly inspected and has the satisfactory quality. In making the meals religious and health requirements are observed.

489. The convicted persons are entitled to meet their religious needs, and the prisons are obliged to provide the conditions for religious needs by ensuring the room and religious servant who can do the religious service (Article 127 - 129 of the Law on Execution of Criminal and Misdemeanour Sanctions). The house rules of the institution more closely determine the time of religious services, method of securing the convicted persons attending the religious service and other issues of interest for realisation of the rights of convicted persons. All convicted persons are enabled to meet their religious, spiritual and ethical needs.

490. The law emphasises that work of convicted persons should be useful and that it should correspond to contemporary way of work of the same kind at large as much as possible excluding any degrading relationship towards a convicted person (Article 15 of the Law on Execution of Criminal and Misdemeanours Sanctions). The work of convicted persons must not be subjected to achieving economic profit nor may it detriment realisation of the reformatory purpose.

491. In the institutions of Republika Srpska the work of convicted persons is organised in the economic units, in plants and on site within or out of the prison. The law allows employment of convicted persons out of prisons in companies and other organisations, and the law enables the person convicted for a time sentence of one year to do the job which he used to do at the time of committing the offence, during the time of serving the sentence, only if the criminal offence is not in connection with that job, and the permission for this is issued by the Ministry of Justice. Working hours of convicted persons is equal to working hours of the the employees in the community, and the convicted persons are entitled for a daily, weekly and annual leave lasting for 18 work days which, in principle, are used within the institution, but if this right is exercised with the special benefits, it can be used outside the prison. Convicted persons are insured against accidents at work and professional diseases under the same conditions as the employees in the community. Convicted persons are remunerated for their work which amounts to at least 20% of the lowest remuneration for work in Republika Srpska, provided that remuneration for the work that lasts longer than full work time and work at night is increased according to the regulations on employment.

492. Economic units are established in all prisons where the convicted persons exercise their right to work, training and professional upgrading. The law and the by-laws define that the convicted persons are properly remunerated for their work, and this regulation are fully

implemented. A convicted person disposes of 70% of the remuneration in order to meet his own needs, and the remaining 30% is saved, which a person receives after the time sentence is served. If a convicted person does not work, without his fault, and has no remuneration, then the institution provides him with the funds necessary to meet the most necessary needs. Also, if the convicted person becomes diseased at work or in connection with the work in the prison, than he is entitled to remuneration while being prevented to work. Each convicted person engaged at work is insured against disability or body damage caused by the accident at work or professional disease, except for self-injury.

493. Prison Banja Luka: The convicted persons are accommodated in the building separated from the detention department. Dormitories have the capacity of 8, 10 and 12 beds, and all beds are at the floor level, the windows provide sufficient day light and fresh air. The rooms are heated by central heating system. Access to dormitories, sanitary units, lavatories and living rooms is functionally resolved through entrance from a joint hall. Each convicted person has his own bed and a wardrobe. Sanitary units are the problem and it is necessary to reconstruct the sewage system. By adaptation and construction of the building reformatory department, good conditions for educational measures have been achieved. Playing grounds and other spaces provide the possibility to go in for various cultural, entertaining and sports activities. The convicted persons are engaged to work in the own plants and to provide services to the third parties.

494. Prison Foča/Srbinje: The convicted persons are accommodated in one of two four-storey blocks in so called "small" and "large" rooms and in the economic unit of the prison where 30 to 35 convicted persons are accommodated. "Small" rooms have two dormitories with 10 to 12 beds, joint TV room, living room, lavatory and sanitary unit. "Large" rooms have four dormitories with 10 to 12 beds, joint TV room, living room, lavatory and sanitary units. Sanitary units are separated from dormitories and TV room. Except the dormitories on the ground floor, all dormitories have enough day light and fresh air. The beds are at the floor level. Each convicted person has his own wardrobe. Access of the convicts to lavatory and sanitary unit is free and undisturbed. The bathroom is located in the other building, and besides having small capacity it is in a rather bad condition. The entire sewage system and roof structure are in a rather bad condition. Their replacement and reconstruction is necessary. The rooms (living rooms) are heated (as 50 years ago) by fire wood stoves which is insufficient and there is a threat of fire which hinders the security.

495. The prison has a cinema hall, playing grounds and other contents for cultural and sports activities. All convicted persons capable to work are employed in own production facilities within and outside the prison. The other block of the building, also four-storey building, has the capacity of 120 places, and is disused so that this prison functions below its optimal capacity. This space is planned for reconstruction and adaptation for execution of long-term time sentence and juvenile imprisonment, and it has the conditions also to adapt the space for stationery medical treatment and other contents of health care.

496. During 2003, the government of RS provided the funds to repair the boiler house and steam pipelines so that, by the beginning of the heating season, it is expected they will be put into operation. The funds have been provided also for roof reconstruction and adaptation of the department for execution of juvenile imprisonment.

497. Prison Srpsko Sarajevo: Convicted persons are accommodated in dormitories with 10 beds each. Female department is completely separated from the male department; it is adapted and has all contents except maternity delivery room. Dormitories are well lighted by day light, the beds are at the floor level and the rooms are kept tidy and clean. Lavatories, bathrooms and sanitary units are separated from the dormitories and have sufficient capacity and are easily accessible.

498. The prison has exceptional contents for cultural, entertaining and sports activities. By returning the space presently used by other institutions, the working conditions for convicted persons could be improved to a great extent as well as certain contents that influence the standard of the convicts. All convicted persons capable to work are employed in own production facilities inside and outside the institution.

499. District prison Doboj: Convicted persons are accommodated in dormitories having 6 to 8 beds each. The beds are at the floor level, except for the admission room where they are on two levels. Some of the rooms are rather dark so that it is not possible to read in the day light. Sanitary units, lavatories and bathrooms are in a rather bad condition and require urgent repairs and replacement of unserviceable installations. The access to these rooms is free and undisturbed to all the convicts.

500. The rooms are heated by remote city heating system, and there is one common (spare) boiler room shared with the Centre of Public Security Doboj. The convicted persons have enough space, except for the sports activities. The conditions of accommodation in the half-open type of the department are rather good. Different services to third parties are supplied and the activities in own economic unit are performed.

501. District prison Bijeljina: The convicted persons are accommodated in ground floor rooms in dormitories with 6-12 beds. The beds are two-level beds with the small wardrobes-cassettes under the bed. The dormitories are overcrowded and have very bad day light. The entrance to all the rooms, living room, sanitary units and bathroom leads from the joint hall. The access of the convicts to sanitary units and bathroom is undisturbed at any time, although, as to their capacity, these rooms do not correspond to the number of the convicts. Neither is the room space in accordance with the standards. The space for participating in free activities is also very poor. The rooms are heated from the own boiler house of the institution.

502. Half-open department (economic unit) having the capacity of 10 beds has good conditions for accommodation of the convicted persons. The convicted persons perform different services for the third parties as well as farming and catering in own premises. Improvement of accommodation conditions is only possible by building one more storey on the existing buildings.

503. District prison Trebinje: By completion of initiated adaptation and already completed facilities, the decent conditions will be created for execution of imprisonment with respect to space as well as other contents that this institution disposes of. The rooms are functional and the access of the convicted persons to the bathroom, sanitary units, living room is undisturbed. Just like in all other prisons this prison, too, does not dispose of the playing grounds for sports activities. The detention measure has been executed in this prison since 1.11.2000 and imprisonment since 1.1.2003.

504. Special hospital Sokolac: is the institution which, as to its organisation, belongs to the Psychiatric Hospital. The measure of mandatory psychiatric treatment and custody is executed in this medical institution when pronounced individually or along with the time sentence and security measures of mandatory custody and treatment. The persons convicted for long-term sentence are sent to this hospital for treatment from the prisons, as well as those who need treatment and rehabilitation. Also the judicial-psychiatric expertise with diagnostics is performed here.

505. Partial reconstruction of the hospital was performed in 1997. Accommodation capacity is 28 beds at the closed department in 5 rooms, with the living room, dining room and two sanitary units, and 53 beds at the open rehabilitation department with 8 rooms, living room, room for visits, bathroom and 2 sanitary units which do not meet the needs. As a rule, as the medical treatment is provided for more patients than allowed by the capacity, the accommodation conditions already poor are becoming even worse.

506. The detention measure is executed at all prisons in RS (except prison Foča/Srbinje) in the separate departments physically separated from the departments for serving the time sentence. The institute of detention is stipulated, to the greatest extent, by the Criminal Procedure Code, and to the smaller extent, by the Law on Execution of Criminal and Misdemeanours Sanctions. As to its nature, this measure is the preventive deprivation of freedom, a preventive measure, and its purpose is to ensure the presence of the accused at the criminal proceedings and its successful conduct. The total accommodation capacities for execution of detention are 270 places (criterion of 4 m<sup>2</sup> per one person).

See Table No. 15 - Table summary of the Report

507. The measure of detention has not been executed at the prison Foča/Srbinje since 1.11.2000. At District Prison Trebinje, the detention measure has been executed since 1.11.2000. The above data show some oscillations, however, they do not show the tendency of increase of the number of detained persons. The accommodation capacities meet the present needs.

508. The accommodation conditions for the detained persons are worse than the conditions for execution of time sentence. The prisons provide physical and material security for the convicted persons. The Minister of Justice of RS passed the by-laws on house rules for execution of the measure of detention and all prison administrations observe these rules.

509. All detained persons are admitted to the institution on the basis of the written warrant, i.e. the decision of the court conducting the proceedings. Proper records are kept for each detained person, and after the insight into documentation it has been found that there are no cases of "unrecorded" detentions and that the detained persons are not kept there longer than it is ordered by the decision. After admission in the institution, the detainee is acquainted with the rights and obligations during the time of detention and is subjected to general medical examination. The medical findings are recorded into the medical files of the detainee.

510. Supervision of the execution of detention is performed by the president of the competent court in whose territory is the seat of the institution where the measure of detention is executed, as well as by the Ministry. By insight into the book of records it has been found that the visit of

the presidents of the courts is not regular to some institutions. The main remarks which the detainees state refer to sluggishness of the court authorities. The duration of detention varies from institution to institution, but what is a common feature is that one waits for a long time until the effective completion of the criminal proceedings is pronounced. There are court proceedings which, along with the interruptions, last longer than 10 years and there are detainees who wait for valid sentence for more than 24 months. Visits to detainees are undisturbed, on the basis of the approval of the judge conducting the proceedings. The detainees wear their own clothes, except when they are employed and receive the working clothes. Employment of detainees is very rare and it is done upon their request and by approval of the authority conducting the proceedings. Remuneration for work is paid in the same manner as to the convicted persons.

511. All other rights that are guaranteed by the law and by-laws on house rules (contacts with outside world, receiving parcels and money, food, medical protection etc.) are fully observed. Staying in fresh air is regular and is recorded properly, but the length of the stay is in direct connection with the space capacity of the institution.

512. Some institutions (District Prison Bijeljina, Prison Srpsko Sarajevo) do not have installed light and sound indicators in the cells for execution of detention to enable the detainees to call the guard on duty, if necessary. This and some other disadvantages must be eliminated in the forthcoming period, as a priority.

513. According to the law regulations the detainees are separated from the convicted persons, and female are separated from male persons, while the juveniles serve the time sentence together with the adults. Punishment of juvenile imprisonment for male juveniles is executed at the prison Foča/Srbijne. The department where these persons should be accommodated has not been adapted for this purpose due to lack of financial resources. The convicted juveniles are in every day contacts with other convicted persons. Within the period covered by the report, the number of these persons amounted to 6 - 8 convicted juveniles.

514. Punishment of juvenile imprisonment for convicted female persons is executed in half-open type prison Srpsko Sarajevo at the separate department, together with other convicted adult female persons. Within the period covered by the report only one juvenile female person was serving the time in this prison.

515. The department for execution of imprisonment for convicted female persons is completely separated from the male department and it has all the contents except maternity delivery room. The space is rather small for free activities and walking, so it has been planned to adapt the available capacities to achieve better accommodation conditions. The personnel employed at this department are female persons, although the number is insufficient. All convicted female persons whose number is 10-20 are engaged at work, in the kitchen of the institution, and in maintaining hygiene and green areas. Detention units in all prisons in RS dispose of the rooms (cells) for execution of the detention of female persons and the employees are women.

516. For juvenile offenders who are subject to educational-correctional measure of committal to education-reformatory home, the execution is planned in the special department located at the prison in Banja Luka. While pronouncing this measure the duration is not specified, but the



court subsequently decides upon duration of this measure which can be pronounced for the period between one and five years. Although such an institution was opened in Republika Srpska in 2002, it has not yet been put into function because the material assets have not been provided for functioning of this institution.

517. At this department the educational measure would be executed both for male and female persons. The capacity of the department is 20 places, and according to the data from the courts in the territory of RS, in the first half of 2002 there were 15 persons convicted to undergo the measure of committal to educational-reformatory home. Some of these persons have become adults in the meantime.

518. The law establishes the right to have medical care, free of charge, and it includes treatment, procurement of orthopaedic aids, spectacles, hearing devices or other aids, in the same manner as for other population. If the institution cannot ensure medical care, the convicted person is sent to the other medical institution or specialist hospital. Systematic general medical examinations of the convicted juveniles and younger adults are performed with the convicted persons once a year, and, upon the proposal of a medical doctor of the institution, more often, if necessary. Necessary medical measures may be applied to the convicted person if, by refusing the food or refusing medical treatment, the person endangers his life and health, and only if there are medical indications for it. The spouse or some other member of the family or the person stated by the convict is informed about any serious disease of the convicted person.

519. During pregnancy, delivery and maternity the general regulations are applied to the convicted female persons as regards to leave from work. The fact of giving a birth to a child in the prison may not be mentioned in the birth certificate (Article 152 of the Law on Execution of Criminal and Misdemeanour Sanctions). Up to one year of age the child stays with the mother in special rooms for women in maternity period, after which, upon the agreement of the mother, the child is handed over to a family or a social care authority.

520. In case of a death of the convicted person, the institution, without delay, informs the spouse or some other member of the family of the convicted person, the court which passed the verdict, and the registrar competent for the place of location of the institution (Article 153 of the Law on Execution Criminal and Misdemeanour Sanctions).

521. If deterioration of health is caused by self-injury, the convicted persons bears the costs of medical treatment. According to the law regulations valid for all arrested persons, both the convicted and detained are subjected to medical examination to determine the health condition immediately after arrival in the institution. Medical services are organised for this purpose at all institutions in RS. Only the District Prison Bijeljina has full-time employed medical doctors, while the other prisons engage the doctors - specialists (for internal diseases, psychiatrists) on the basis of a contract and they come to prison on regular basis every day or on stipulated days, or upon the call, which depends on how big the institution is. One or two medical technicians are permanently employed on full time basis at the institutions (except for District Prison Trebinje). Each institution has its own outpatient department where primary examinations are performed and which provides first aid, mini pharmacy, and the stationary department (except for District Prison Bijeljina). Prisons also have their own dentist's practices where, from time to time, or on regular basis, the dentists work. All more complicated examinations and treatment of the convicted persons are performed at the local medical institutions or Special Hospital Sokolac.

522. Within the period covered by the report, 11 persons suffering tuberculosis and two suffering AIDS were registered. For 9 diseased of tuberculosis the disease was discovered at arrival to prison to serve the sentence, while 2 convicted persons suffering tuberculosis got the disease during serving the time sentence. HIV positive convict in District Prison Dobož was released from serving the sentence in 1999, while in the prison in Banja Luka HIV positive convict serves the sentence of 2 years and 6 months. Previously he was in the Special Hospital Sokolac from where he escaped. He is under permanent control of the doctors - specialists and is given the therapy. He is accommodated in a separate room in the stationary department of the prison. The disease is the reason for his isolation from other convicts and free persons.

523. Misdemeanours sanctions are executed in all prisons in RS, except for the prison in Foča/Srbijne. The time is served separately from the convicted persons in separate dormitories while other contents are used together. They are equal in their rights and obligations to the convicted persons. Article 29 of the Law on Execution Criminal and Misdemeanours Sanctions in RS stipulates establishing the schools as special institutions at prisons where general and professional education of the convicted persons is realised. Schools have not been established in any of the prisons, and the process of education mostly includes the juvenile convicted persons.

524. In co-operation with local schools (elementary and secondary) extra exams are organised and the schooling costs are covered by prisons. According to educational and age structure, as well as according to duration of the sentence, existence of schools would be desirable, but their founding is connected to many problems: financial, personnel, space etc.

525. Regarding education of convicted persons, the law prescribes compulsory elementary education for juveniles who have not completed elementary school education, and, if necessary, secondary school education which is determined by the programme of treatment. Besides, the institutions organise special forms of vocational education of convicted persons in co-operation with the schools located in the same town as the institution. The issued certificates may not show that general or vocational education was completed in prison institutions. Besides the above stated, the convicted persons are approved external education at post-secondary and university schools. For professional education of the convicted persons the library is available with a number of books and magazines, and the possibility to listen and watch the radio and TV programme. Libraries should be renewed with new editions and the books of religious contents.

526. Contacts of convicted persons with the family and social environment are undisturbed. These contacts are made by visits of relatives and friends, by sending and receiving the postal shipments, receiving the parcels and telephone conversations. In all prisons in RS there are telephone booths available to the convicted persons. Having and using the self phones is forbidden. The persons convicted to a sentence of 10 years, after having served 1/3 of the time and have good conduct and behaviour and fulfil all, by law stipulated obligations, can use certain benefits: going downtown (outside the institution) alone or with the visitors, spend a weekend with the family, use the leave of 7 days and annual vacation of 18 days. These benefits were used by over 2/3 of the convicted population within the period covered by the report. Persons convicted to a sentence of over 10 years gain this benefit after having served 1/2 of the time. The kinds of benefits, conditions for their approval and decision-making about their distribution is stipulated by the by-laws passed by the Minister of Justice.

527. The convicted person has the right and possibility to correspond, without restrictions, with his family and other persons. Submissions for protection of his rights may be sent by the convicted persons to the authorities without supervision of the administration of the prison. The convicted person may submit a complaint against irregularities referring to exercising his rights, to the head of the prison and the official person from the Ministry who carries out supervision of realisation of the rights of convicted persons in prisons.

528. The convicted person is entitled to receive visits of the members of the family, and upon the approval of the head of the institutions, also, of other persons. The number of visits is determined in accordance with the type of the institution and it depends on success of implementation of the reformation of the convicted person. The convicted person who is a foreign citizen may be visited by the diplomatic representative of his state or the state protecting his rights according to the regulations of international law and international treaties under the conditions of reciprocity (Article 125, paragraph 5 of the Law on Execution of Criminal and Misdemeanours Sanctions).

529. For the persons deprived of freedom in the authorities of interior there are Instructions on Conduct which stipulate the manner of receiving the persons deprived of freedom on the premises of the department of interior, as well as their accommodation, health and hygienic conditions and food, and also the accompanying documentation referring to official act of arrest and other rights of the arrested person, the manner of conduct of arrested persons, the obligation of the authorised official persons and other issues referring to the procedure and conduct of official persons towards the persons who are deprived of freedom. The arrested persons being detained should have the adequate room at the department of interior, which is ensured at the seats of Canton Ministries of Interior and some Police Departments. The corresponding records are kept about the arrested and detained persons and the appropriate forms are filled in, from the moment of arrest to the moment of handing the person over to the competent court or some other authority, stating the possible medical examination, information that the person has the right to defence attorney, about giving meals etc.

530. Within the period between 27.4. and 9.5.2003 Bosnia and Herzegovina was visited by European Commission for Prevention of Torture and Inhuman and Degrading Treatment and Punishment (CPT). The head of the delegation, Mrs Renata Klicker informed us about the preliminary observations notifying that some initial information was given on the spot in some institutions having been visited (prisons and psychiatric hospitals).

531. According to the preliminary observations, as stated in the text of the statement referring to the police, the delegation visited the following police institutions in Federation of B&H: Police Departments Mostar and Novo Sarajevo, Police Stations Mostar Centar, Posu{je and [iroki Brijeg as well as some Centres of Public Security and police stations in Republika Srpska. The delegation interviewed the persons recently arrested by the police. Many of them stated that they were treated well by the police both during the arrest and during the time of detention in the Police Department.

532. However, the delegation also heard a certain number of detailed, possible alleged complaints about physical mistreatment by the authorised officials. These alleged accusations referred to the police officers in uniforms and criminal inspectors.

533. In several cases the delegation collected the supporting medical documentation, either by checking the medical files that are opened as soon as the person is admitted to the investigation detention unit or through direct observations of some of the doctors in the delegation. Medical documentation is consistent to the accusations of the persons of having been mistreated. More generally, the medical personnel in some of the investigation detention units have confirmed that, from their experience, a certain number of the persons admitted to their institutions, after having been detained in the police, indeed state that they were mistreated and they also show the injuries which are consistent to their statements.

534. The best possible guarantee against mistreatment is to have it undoubtedly rejected by all police officials. This means strict criteria of selection at the time of their employment and providing the adequate professional training. Another useful means to prevent unfair treatment is based on thorough investigation of any relevant information referring to mistreatment, that can be observed by any competent authority, irrespective of whether this information is submitted in the form of official complaint or not.

535. In the statement on preliminary observations, it is stated that in the practice of both entities, although the laws differ from each other, the persons are usually detained in the police premises for a relatively short period of time (i.e. 24 hours or less). Even then, there are some elementary requirements referring to material conditions in the police premises for detention: they must be clean and decent, the person accommodated there must have immediate access to the toilette; the rooms must be appropriately ventilated and have adequate light and heating; and the persons staying there over night must get clean mattresses and bed linen. The cellar cells in some of the police stations, as stated, obviously do not meet these requirements. They are dirty (blood stains on the walls, urine at the corners, rotten mattresses); in some of the cellar rooms there is no heating and artificial illumination at all, and there is hardly any natural day light coming in. The delegation requested immediate action in order to eliminate these things in these cells, or to put them out of usage.

536. Within the context of the police, there are three fundamental measures of prevention of unfair treatment. They must be guaranteed from the moment of arrest i.e. from the moment from which a person is forced to stay with the police. They are: recording the arrest, i.e. detention, access to defence attorney and access to the medical doctor, in respect to formal legal framework, as this has been stated in the statement on preliminary observations. These provisions already exist or will exist when the legislative is harmonised at the level of both entities with the legislative at the state level. However, there turns out to be a wide gap between formal legal regulations and their practical application. There are excellent form sheets in the registers of detention (“Records on Deprivation of Freedom”). However, they are not always used in the right manner. The delegation also discovered some cases without any data about detention of a person in the police institution. The commissioners of all canton ministries of interior have been acquainted with the preliminary observations in order to take measures and actions to eliminate the observed defects and in order to prevent torture and inhuman or degrading treatment and punishment.

537. Deprivation of freedom of the persons in the territory of District of Brčko B&H is stipulated by the Criminal Procedure Code, and the manner of treatment of the persons deprived of freedom is also stipulated by the regulations. Supervision of the rules, instructions and

methods of interrogation and the provisions referring to custody of arrested, detained or imprisoned persons and the manner of treatment is carried out by: prosecutor, the judge in charge of proceedings, the president of the court, and in any case of possible infringement, the representatives of EUPM, defence attorney, media and representatives of non-governmental organisations are informed accordingly.

538. The complaints of the detained or persons in custody is received by the President of the Basic Court of District of Brčko B&H, through the head of the detention unit. The president of the Basic Court investigates the justification of the complaint and takes measures for processing it.

## Article 12

**Procedure for conducting investigation is regulated in articles 35, 36, 213, 214, 215, 216, 217, 218, 219, 220, 221, 223, 224 and 225 of the Criminal Procedure Code of BiH**

539. As the Criminal Code of Bosnia and Herzegovina entered into force on 1.3.2003, so that the Court of Bosnia and Herzegovina as the institution of Bosnia and Herzegovina has been enabled to arrest or imprison the persons upon its decisions only starting from this date, these issues, including also investigations on possible acts of torture until that date, were stipulated solely by the regulations of the authorities in the entities of Bosnia and Herzegovina and District of Brčko of Bosnia and Herzegovina. Thus, presently, there are no recorded cases suspecting that the act of torture has been committed against a detained or imprisoned person by the officials of the institutions of Bosnia and Herzegovina.

540. The Principles and Procedures, as the fundamental guidelines for professional, lawful, ethically fair and democratic operation of the police, containing the rules of conduct and behaviour under certain circumstances, have been passed in the Federal Ministry of Interior, as well as Canton Ministries of Interior.

541. In all cases when these rules are violated, and especially in case of unlawful actions that can be connected with torture and mistreatment, abuse and exceeding of official authorisation in using force, the impartial investigation is carried out by the Department of Internal Control and Inspection in order to determine the truthful facts that would enable the administration of the Ministry to make the right decision regarding taking the appropriate disciplinary and other measures.

542. The authorities carrying out the investigation and taking appropriate measures in case of violation of the rules against the persons deprived of freedom, detained or imprisoned persons, are:

- (a) Internal Control of the Police of District of Brčko B&H;
- (b) President of the Basic and Appeal Court of District of Brčko B&H;
- (c) Appellation Commission of the Government of District of Brčko B&H.

543. In the previous period there were no cases of conducting this procedure by any of the mentioned authorities.

### Article 13

544. As the Criminal Code of Bosnia and Herzegovina entered into force on 1.3.2003 so that the Court of Bosnia and Herzegovina as the institution of Bosnia and Herzegovina has been enabled to arrest or imprison the persons upon its decisions only starting from this date, these issues, including also investigations on possible acts of torture until that date, were stipulated solely by the regulations of the authorities in the entities of Bosnia and Herzegovina and District of Brčko of Bosnia and Herzegovina.

545. Reference is made to Articles 146 and 147 of the Criminal Procedure Code of BiH.

546. Reference is made to Articles 54, 55 and 56 of the Law on Civil Service Agency in the institutions of BiH – regulations on disciplinary responsibility, disciplinary procedures and disciplinary measures that could be taken against civil servants in the institutions of BiH.

547. Court and shall also:

(a) Have access to the administrative file before the appointing authority, the Agency for Civil Service and the Civil Service Board;

(b) Be entitled to be heard and to receive the assistance of a legal counsellor before the appointing authority, the Agency for Civil Service and the Civil Service Board.

548. The procedure for determining the disciplinary accountability of civil servants for breach of official duties shall be conducted in accordance with principles of criminal procedure code, unless this Law determines otherwise.

549. Regarding other persons that can be subject of the activities of the civil servants of the institutions of Bosnia and Herzegovina that can be interpreted as acts of torture pursuant to Article 1 of the Convention against torture, such persons may file a complaint to such conduct of these persons to the head of the institution to which the civil servant belongs, or to the Ombudsman for Human Rights of Bosnia and Herzegovina in order to have such a case investigated and necessary measures taken.

550. In the Federation of B&H, if, during the execution of imprisonment or detention, there is a violation of human rights or the rights stipulated by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, the convicted persons, misdemeanour violators and detained persons have wide possibilities to submit the complaints to authorities of the Federation of Bosnia and Herzegovina.

551. On the basis of the Articles 85 and 87 of the Law the convicted persons are entitled to receive letters from the authorities and other institutions and send their submissions for protection of their rights and interests protected by the law, without restrictions and control. Foreign citizens may address to consular representative offices of their state or the state that protects their rights and interests, and the persons without citizenship and refugees may address to institutions that, according to the international laws, protect the interests of such persons. Consular representative of their state or the state protecting their interests is entitled, within the limits of house rules of the prison, to visit the convicted or detained person.

552. On the basis of the Article 92 of the Law, the convicted person is entitled to complain to Federal Ministry of Justice, i.e. the corresponding authority of the Canton Government against the official persons of the institution for violation of their rights. The convicted persons can exercise this right during the visits of the Inspection of Federal Ministry of Justice to prisons paid by the inspector in charge of execution of imprisonment. On that occasion, the inspectors are obliged to carry out necessary controls and, in case they find that the complaints are grounded, they are supposed to take the necessary measures in order to protect the fundamental rights of convicted persons.

553. Disciplinary procedure and disciplinary punishment against the accused person is carried out by the disciplinary commission appointed by the head of the prison. During the procedure the accused person must be enabled to present his defence. The accused person must, also, be enabled to submit his complaint to the head of the prison against the decision of the commission on pronouncing the disciplinary punishment. This complaint does not postpone the execution of the decision. The second-instance decision made upon the complaint of the accused person is final and binding and the administrative suit cannot be conducted against it.

554. In 2002 two convicted persons: K.Z. and G.@. from Prison in Zenica, started the proceedings before the Human Rights Chamber on the basis of the Article 3 of the European Convention prohibiting torture, inhuman treatment and degrading treatment and punishment.

555. Mr K.Z. is conducting a proceedings in case NR CH/99/1186"Z.K." against the Federation B&H because "he was raped by some convicts with active and passive assistance of the guards". The proceedings is still under way.

556. Mr @.G. conducts a proceedings in case NR CH/03/13435/@.G. against the Federation B&H because "he was not transferred for further serving of the sentence to the half-open type prison" and because of "inhuman and unlawful treatment against him". This proceeding is also under way. Within last 4 years all convicted persons have had the possibility to address directly (with letter or by telephone) to the Ombudsmen of the Federation B&H, which they exercise when necessary. The detained persons can do it by letter.

557. The convicted persons mostly address to them because they wish to serve their sentence in the other entity, because of impossibility to express their religious feelings during serving the sentence in some of the prisons, and due to impossibility to consume the desired food (meat, oil, fat), due to insufficient medical services and treatment etc. Besides these requirements, the frequent case is that the detained persons address to them because of duration of the criminal procedure and sluggishness in making the first-instance decisions etc.

558. In Republika Srpska, according to the Article 124 of the Law, the convicted persons are enabled to send their submissions to authorities in order to protect their rights and interests protected by the law. Furthermore, the convicted person is entitled to complain, in discretion, to the head of the institution, due to violation of his rights and other irregularities done against him. The complaints must be processed without delay. If the convicted person is not satisfied with the decision, he is entitled to submit a written complaint to the Ministry of Justice of RS and complain to the official person supervising the institution, without presence of the officials of the institution.

559. This very delicate field of human rights and freedoms of the convicted and detained persons is under the supervision of the administration and management of the prisons on daily basis. They are the subject of special interest of the inspection supervision performed by the Ministry of Justice.

560. Through anonymous questionnaire among the convicted persons, and through the meetings and direct conversations the data about violation of the rights and freedoms guaranteed by the law are discovered and they refer to all kinds of abuse by the prison personnel. The data gained in this manner are almost identical to the official information that the institutions officially submit to the Ministry of Justice.

561. In Republika Srpska there is a long-standing practice to hold so called “request report meetings with personal address” in the prison institutions. The reports are conducted by the head of the institution or his delegate, at least once a week, and on that occasion a convicted person, without fearing of the consequences, can openly state his opinion about the living and working conditions in the institution, as well as the complaints about the work of departments or individuals, and to complain about deprivation of rights or possible mistreatment. etc.

See Table No. 16 - Table summary of the Report

562. The above data clearly show that the greatest number of the convicted persons used “speech” for presenting their complaints and requirements. The most frequent reasons for attending the request report meetings are: personal and family problems, “closer acquaintance” with the head of the institution, request for overtime or extraordinary benefits, change of the job place, health condition, accommodation conditions, complaint against quality of the food etc.

563. The complaints against free persons, and there were some of these, mostly referred to unfair treatment of the cooks, working instructors, guards, educators and medical personnel (“got smaller dish of food”, “incorrect calculation of remuneration”, “did not get therapy in time”, “a guard (unidentified) has something against me”, “deprived of benefits” etc.) All these complaints and their expression are normal in human contacts. They are not expressed every day and they are not numerous.

564. The number of other submissions is relatively small, which can be explained by the fact that the representatives of UN IPTF regularly visited prisons within the period from 1996 to 2002 and had undisturbed interviews with all the convicts who expressed their wishes and sent their complaints and petitions through them.

565. The Ministry of Justice of RS and administrations of prisons do not dispose of the data about the number of submissions sent through the representatives of UN IMTF nor the reasons for their submission.

566. The convicted persons, most often, address to the Ministry of Justice and Ombudsman of RS in the situations when the verdicts and decisions made by the authorities, after all legal possibilities have been used, do not allow complaints nor can the administrative proceedings or dispute be conducted. The complaints are submitted also for the negative outcome of the request for amnesty, exceptional reduction of sentence, probation or after the sentence verdicts.



567. The presented number of complaints is recorded by the administration of prisons. This number does not include the complaints referring to: detention warrant and extension of detention, complaints against the sentence verdicts. The number of complaints is probably higher because, during the time of using the benefits, the convicted persons submit their complaints to different addresses stating “everything”.

568. There are, also, tendentious complaints submitted in order to discredit the administration of a prison or its head. The grounded complaints referred to payment of remuneration for work and reimbursement for damage on the basis of injury at work, for procurement of the orthopaedic aids.

569. Submissions to other institutions and authorities used to be more requests for assistance for resolving personal status, material support and taking care of a family etc. rather than having the elements of a complaint.

570. The outcomes of the complaints which the convicted and detained persons submit to the Ministry of Interior of RS or Centre of Public Security against conduct of the officials of public security are not known to administration of prisons as they do not have any return information nor precise data.

571. Helsinki Committee for Human Rights in B&H in its report about the condition in prisons in B&H, NR 01-01/2002 stated:

“Generally, treatment of the convicted persons by the prison guards and administration in all prisons in B&H is within the limits of fair treatment. We have not noted the cases of drastic inhuman treatment of the convicts. The convicted persons mostly complain about bad accommodation, malnutrition and lack of pardon and amnesty.” (Art. 16 of the report).

572. Besides the Helsinki Committee for Human Rights in B&H, Ombudsman of RS and B&H, prisons in this period were visited by the representatives of MKCK, VE, OHR, OSCE and already mentioned representatives of UNIPTF. No special written reports were made about these visits.

573. Each citizen is entitled to submit the complaints, claims and petitions to the Ministry of Interior against conduct of the police officers. Internal Controls established in all Canton Ministries of Interior and in the Federal Ministry of Interior are in charge of processing these complaints. In cases of violation of regulations i.e. exceeding the authorities or committing other acts representing violation of the official duty, as already stated, the authorities and the procedures are established to determine the existence of violation of the official duty and the elements of criminal offence.

574. It should be mentioned that in evaluation as to whether in some concrete case there is a violation of the official duty or suspicion that the criminal offence has been committed, a number of certain officials is included. Namely, before making a decision whether or not to start the disciplinary proceedings against an official or to continue collecting documents about the existence of the elements of a criminal offence, the impartial investigation is conducted at the

Ministry where all circumstances are confirmed, both the extenuating and the aggravating ones, i.e. all the facts that influence the fact whether the complaint, claim or petition is grounded or not, are determined. It is the same in justification of usage of methods of compulsion, which is followed by the thorough internal investigation about justification of methods of compulsion.

575. After the internal investigation has been completed, the decision is made as to whether to start the disciplinary proceedings before the disciplinary commission of the Ministry for violation of duty, i.e. whether there is a suspicion that it is the criminal offence or it is the ungrounded initiative for starting the disciplinary proceedings, i.e. whether it is the ungrounded complaint or petition of the citizen.

576. It should be emphasised that, upon the recommendation of the Mission of UN in B&H - International Police in the new by-laws on organisation of Federal Ministry of Interior and Canton Ministries of Interior a special institute called "Office for Public Complaints" has been established, and it will function within the Ministry but shall carry out its duties and obligations independently of the chain of command. In the Federal Ministry of Interior, this Office shall consist of the chairperson and two members one of which is the official of Federal Ministry of Interior and also two members as the representatives of the public. The commission of the Parliament of F B&H shall elect the chairperson and the members of the Office, and the Minister of Federal Ministry of Interior shall appoint them. This Office is responsible for supervision of all complaints and petitions submitted to the Ministry, supervision of internal investigations, orders for starting the investigation, supervision of the measures taken by the Unit for Internal Control, Informing the complainants about the outcome of the investigation etc. This institute shall ensure more objective decision-making and transparency of work in this field.

577. After the internal investigations have been conducted in the territory of the Federation B&H, the Disciplinary Commissions pronounced the punishments for severe infringement of duty, and the head of the institution pronounced them for minor infringement of duty.

**Disciplinary measures and punishments pronounced  
to the authorised official persons**

	1996	1997	1998	1999	2000	2001	2002	2003 (6 m)	Total
Number of officials punished for grave violation of duty	87	101	63	87	115	47	76	22	598
Number of officials punished for minor violation of duty	174	22	71	364	33	61	54	75	854

578. For achieving lawful and correct conduct of the officials of Ministry of Interior of RS, in all domains of work, in 1999 the Inspectorate for Internal Control, Protection and Supervision of Legality at Work was founded and it deals with discovering and prevention of non-permitted conduct of the officials of the Ministry, i.e. it processes the complaints referring to unlawful actions or irregular conduct of the officials of the Ministry of Interior: violation of the code of conduct, standards of behaviour or other regulations and general acts.

579. The internal procedure for violation of duty is started on the basis of: complaints of the citizens, reports of the officials of Ministry of Interior or requests of the superiors of the officials of the Ministry of Interior of RS, and it is conducted by the Inspectorate for internal control, monitoring and protection of legality at work. After investigation, depending on the severity of the violation of duty, and in case of minor violation, the Inspectorate submits its report with the proposal of disciplinary measure to the superior officer of the official, and in case of grave violation of obligation and duty, the report is submitted to the competent disciplinary prosecutor to raise the request for starting the disciplinary proceedings before the Disciplinary Commission.

580. Within the period between 1.1.2002 and 31.12.2002 the Inspectorate for Internal Control, Monitoring and Protection of Legality at Work received 1055 cases. 616 of these were the complaints of citizens and 423 were the requests for internal investigation submitted by the superior officers of the Ministry of Interior of RS or the Office for Human Rights at IPTF and 16 were other cases. 341 requests were submitted for starting the disciplinary proceedings against the employees for committing minor and grave violations of official duty.

581. Within the period from 1.1.2002 to 30.6.2003. The Inspectorate for Internal Control, Monitoring and Protection of Legality at Work received 548 cases: 373 of which were the complaints of the citizens, 171 were the requests for internal investigation submitted by the superior officers of the Ministry of Interior of RS and 4 were other cases. 146 requests were submitted for starting the disciplinary proceedings.

582. It is necessary to emphasise that after making the Analysis of the structure of the police of Republika Srpska, made by the mission of UNMIBH, Since October 2002, the by-laws on job places at Ministry of Interior of RS have established the Office for Complaints and Petitions of Citizens which will process the complaints and petitions of the citizens and officials of the Ministry, and shall consist of a president and four members. The president and the members of the Office are elected by the Board of National Assembly for monitoring and control of work of authorities and institutions in the field of defence and interior, and the Ministry of Interior of RS appoints these persons to their posts.

583. It is also, important to mention that the mission UNMIBH accredited the Ministry of Interior of Republika Srpska on 2.10.2002, i.e. awarded it with the international certificate for operation of this institution because it met the fundamental standards of democratic police institutions. Besides, within its mandate UNMIBH/IPTF carried out individual certification of the officials of the Ministry of Interior of RS who, according to the policy of IPTF, fulfilled all the criteria for gaining the final certificate for work.

584. After completion of the mandate of UNMIBH/IPTF, the mission of European Police - EUPM started its activities on 1.1.2003 in order to assist the authorities of B&H in building up the police that would achieve the highest European and international standards. EUPM has not the executive power, but only counselling role along with supervision, mentor function and inspection of the management personnel of the police, which, certainly, can have the preventive impact on the officials of the police in more professional performing of their duties with respect for human rights and freedoms of citizens.

585. Each person who was subjected to torture in treatment by the official persons are guaranteed the right of petition against these acts committed against him, according to the Criminal Procedure Code, Law on Misdemeanours, Law on Execution of Criminal Sanctions. In terms of these laws the protection measures against any ill-treatment or intimidation caused by submission of petition are guaranteed.

#### **Article 14**

586. Reference is made to Article 11 of the Criminal Procedure Code of BiH which regulates right to compensation and rehabilitation, while property claims are regulated in Articles 193, 194, 195, 196, 197 and 198 of the Criminal Procedure Code of BiH.

587. According to the article 8 of the Criminal Procedure Code of the Federation of B&H, a person who has been illegitimately convicted for a criminal offence or has illegitimately been deprived of freedom, is entitled to rehabilitation, to compensation from the budget as well as all other rights stipulated by the law. The right to compensation and rehabilitation of the persons who have been illegitimately convicted for a criminal offence or have been illegitimately deprived of freedom is, also, stipulated in the article 11 of the Criminal Procedure Code of Bosnia and Herzegovina.

588. Article 12 of the Criminal Procedure Code stipulates that the person who has been illegitimately convicted for a criminal offence or has been illegitimately deprived of freedom is entitled to be rehabilitated, has the right to compensation as well as other rights stipulated by the law.

589. Article 541 of the Criminal Procedure Code stipulates that the right to compensation belongs to a person against whom the criminal sanction has been pronounced or who has been pronounced guilty but was freed from sanction, and later, on the basis of the exceptional remedy a new proceeding has been legally dismissed or he has been freed from the indictment or the indictment has been dropped by a valid verdict. The convicted person has no right to compensation if, by false confession or in some other way, he deliberately caused his own verdict, except in the case when he was forced to do so.

590. If the injured person (due to illegitimate verdict) dies before compensation is done, his heirs are entitled to compensation of property damage, i.e. they can start the suit for compensation if the statute of limitations is not in force.

591. If the case which the illegitimate verdict or ungrounded deprivation of freedom refer to, and this has been published in the media, upon the request of the injured person, the court shall publish in the media the statement about the decision showing previous illegitimacy of deprivation of freedom.

592. At the same time, and in accordance with the Criminal Procedure Code, by official duty, the registration of illegitimate verdict into the criminal records is annulled, and the injured person is entitled to compensation as well as other rights from employment relations, social insurance and payment of legally stipulated contributions to the state funds.

593. On the basis of the article 451 of the Criminal Procedure Code of Republika Srpska, the right to compensation for damage caused by illegitimate verdict belongs to the person to whom the valid criminal sanction was pronounced or who was pronounced guilty but was freed from sanction, or on the basis of the exceptional remedy a new proceeding has been legally dismissed or he has been freed from the indictment or the indictment has been dropped by a valid verdict.

594. According to the article 545 of the Criminal procedure Code of Republika Srpska the right to compensation belongs to the person who has been in custody without starting the criminal procedure, or the procedure has been dismissed on the basis of a valid decision, or by a valid verdict the person has been freed from the indictment or the indictment has been dropped or the person who served the punishment of custody, but on the basis of exceptional legal remedy, the custody was pronounced for a shorter term than the custody the person has served. The right to compensation belongs to a person who, due to a mistake or unlawful work of the authorities, has been deprived of freedom or spent in custody the time longer than the term of imprisonment he has been convicted to.

595. If the case which the illegitimate verdict or illegitimate deprivation of freedom refer to are presented in the public media, the court shall, upon the request of that person, publish in the public media the statement about the decision showing illegitimacy of the previous verdict, i.e. ungrounded deprivation of freedom. After the death of the convicted person, the right to submit this request belongs to the family, for a period of six months.

596. The person who was discharged from work or has lost the status of socially insured person due to illegitimate verdict or ungrounded deprivation of freedom, shall have the recognised years of employment i.e. the years of insurance as if the person had been at work.

597. The right to compensation, rehabilitation and exercising other rights of the persons who have been illegitimately convicted or deprived of freedom on ungrounded basis, is stipulated by the Criminal Procedure Code of District of Brčko B&H. (Chapter 31).

598. The right to compensation due to illegitimate verdict belongs to a person that has been validly pronounced guilty or has been pronounced guilty but freed from sanction, or the indictment has been dropped on the basis of a legal remedy. The accused person has not the right to compensation if he has caused his verdict by false confession or some other act, unless he has been forced to do so.

599. Within the rehabilitation programme the Association - Centre offers the all-inclusive, multi-disciplinary treatment including the services of: general practitioner, psychiatrist, psychologist, social worker and physical therapist. In case it is necessary, and according to financial possibilities, the Association - Centre also offers specialist services or dentists, gynaecologists, ophthalmologists and other specialists. As it has not the accommodation space, the Association - Centre offers its services on the basis of daily visits. The objective of the rehabilitation programme of the Association - Centre is to relieve or eliminate the consequences of torture and provide assistance in adaptation of the victims of torture in the given environment.

600. In its, so far performed, work, the Association - Centre has established the contacts with the Helsinki Committee for Human Rights, Office of Ombudsmen of Federation B&H and other institutions in order to provide information about its work for the persons who were exposed to torture by the official persons and who can be the prospective clients of the Association - Centre.

See Table No. 17 - Table summary of the Report

### **Article 15**

601. The obligation of B&H as to the Article 15 of the Convention is stipulated in the Article 10 of the Criminal Procedure Code of B&H which says:

#### Legally Invalid Evidence (Article 10)

- (a) It shall be forbidden to extort a confession or any other statement from the suspect, the accused or any other participant in the proceedings;
- (b) The Court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential violation of this Code;
- (c) The Court may not base its decision on evidence derived from the evidence referred to in Paragraph 2 of this Article.

602. According to the provisions of the Article 8 of the Criminal Procedure Code of F B&H it is forbidden to extort the confession or any other statement from the suspect, accused or any other person participating in the proceedings. The court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties, nor on evidence obtained through violation of this law. The stated lawfulness of evidence is prescribed, in the same manner, in the Article 10 of the Criminal Procedure Code of Bosnia and Herzegovina.

603. Mission of UN - International Police Forces requested from the Federal Ministry of Interior as well as Canton Ministries of Interior to implement a number of recommendations in order to obtain the certificate for performing the work, all this aimed to successful and more professional performing of the tasks under the competence of Ministry of Interior. Education of personnel was also carried out.

604. IPTF conducted its investigations against a certain number of officers of the police and in cases when it was found that the individuals committed violations that made them ineligible for work at the Ministry of Interior, they were decertified i.e. forbidden to do the jobs and tasks under the competence of interior affairs.

605. Mission of European Police that replaced the Mission of UN has not the executive power, but it has counselling role and the role to supervise the work of the police, which can help in preventive influence on the police officers to achieve more professional performance of duties respecting human rights and dignity of the citizens.

606. The Constitution of Republika Srpska stipulates that it is forbidden and punishable to extort any confession or statement, and the Criminal Procedure Code of Republika Srpska forbids using the statements of the persons that have been obtained through usage of force, intimidation or some other similar forbidden method. If the verdict is passed on the basis of unlawfully obtained evidence, it must be annulled in the appeal proceeding.

607. In the criminal proceedings being conducted at the Basic Court in District of Brčko B&H, the statements or evidence harmful for the accused that have been obtained in the preliminary procedure through mistreatment, intimidation or pressure against the person, may not be and are not used as the relevant evidence against the suspect or the accused and are rejected as evidence.

## Article 16

**Regulations of article 16 of the Convention against Torture are implemented through the following regulations of the Criminal Procedure Code, namely articles: 180, 185, 186, 187, 188, 189, 190, 191 and 192**

608. In the Federation of B&H, the Article 11 of the Criminal Procedure Code of F B&H stipulates that treatment of the convicted persons must be human with respect for their human dignity and maintaining their physical and mental health taking care of maintaining the order and discipline in prisons of F B&H.

609. Any torture and other cruel, inhuman and degrading treatment of convicted persons by the official persons of the institution are forbidden. In treatment of the convicted persons there must be no discrimination based on race, colour of the skin, sex, language, religion or belief, political and other opinion or other beliefs, ethnic or social origin, relation, economic or some other status.

610. Article 144 of the Law says that the guard may use the methods of compulsion only when it is necessary to prevent the escape, physical attack against personnel or convicted persons, injuring another person, resistance of the convicted person to lawful treatment of the official person, self-injuring or causing material damage by the convicted persons.

611. On the basis of the article 141, paragraph 2, article 148, paragraph 2 and article 136, paragraph 5 of the Law on Execution of Criminal Sanctions, and in connection with the article 11 of the Act on Badge and Uniform, official title and rank designations of the prison police - guards and colour and designation of the vehicle of the Federal institutions for execution of criminal sanctions (Official Gazette of Federation B&H NR 10/99), the Federal Ministry of Justice has passed the by-laws on the manner of performing the security service, on firearms and equipment, using the firearms, official identity card, form of prison police - guards' uniform in the Federal prisons for execution of criminal sanctions. These by-laws were published in the Official Gazette of F B&H NR 15/99 and the text with the amendments was published in NR 46/99.

612. The fundamental regulation is that the security service in prisons is performed by the guards on the basis of: the Law on Execution of Criminal Sanctions in the Federation B&H, these by-laws, instructions and orders of the head of the institution, commanding officer of Security Service, Supervisor of the Guards and other authorised persons of the institution.

**Table presentation of usage of methods of compulsion by the police officers-guards  
within the period from 1996 to 30 June 2003**

Year	Used methods of compulsion	Application of methods of compulsion				Justified	Unjustified	Disciplinary responsibility of guards
		Firearms	Chemicals	Physical force	Baton			
1996	7			4	3	5	2	
1997	12			7	5	12		
1998	10		1	4	5	8	2	
1999	11		1	7	3	2	9	9
2000	8	1		4	3	5	3	0
2001	13		1	9	3	8	5	5
2002	13		1	10	2	9	4	3
2003	10	0	0	10	0	8	2	1
Total	84	1	4	55	24	57	27	18

613. The stated Table clearly shows that within the period from 1996 to 2002 the methods of compulsion against the convicted, misdemeanours offenders and detained persons were used 84 times in prisons of the Federation of B&H. At the average it happened 11 times a year, and compared to the number of the convicted persons, misdemeanours offenders and detained persons who were serving their sentence or were detained at that time, the usage of the methods of compulsion was very little. 55 times physical force was used, and in 24 cases it was a rubber baton, and only in 4 cases the chemical spray was used. Only once, while the convicted person was trying to escape, firearms were used. An interesting information is that in 57 cases the usage of the methods of compulsion was justified and it related to prevention of fight among the convicted persons, active resistance to the official person, prevention of self-injury, attack against the guards and partly to damaging of the prison property. There were no severe consequences for health of the convicted persons against whom the methods of compulsion were used, and those were only slight scratches, bruises and slight physical injuries. There was no case of death.

614. In total number of 19 cases the methods of compulsion used by the prison police - guards was not justified, and the disciplinary proceedings were conducted against these official persons. Mostly, the punishment was a fine, or suspended sentence and one was acquittal.

615. Legal application of methods of compulsion within the scope of activities in prison institutions in the Federation of Bosnia and Herzegovina is one of the most delicate fields of activities in which the prison police are exposed to permanent danger of excessive interference into the very delicate field of human rights and freedoms. In order to prevent all forms of unlawfulness in application of the methods of compulsion in prisons in the Federation of B&H, different measures are taken on daily basis starting from effective supervision of functions at each level of duties as well as at the level of the Federal Ministry of Justice, permanent professional training of the prison personnel, thorough observation of any excess of authorities to development of proper tactics of treatment of the convicted persons, misdemeanours offenders and detained persons.



616. It should be emphasised that in cases of exceeding the authorities in application of legal methods of compulsion, a prison police officer - a guard and all prison personnel are exposed to severe responsibility, and in case they commit a criminal offence they also face criminal responsibility. According to the Criminal Procedure Code of Republika Srpska, the investigation magistrate can entrust the police to carry out the investigation. In doing so, the police act according to the mentioned Code.

617. As stated above, the Law on Interior Affairs of Republika Srpska stipulates that the official persons, in performing the security duties, are entitled to use the methods of compulsion only in proportion to achievement of the legal task, i.e. they may use firearms if they cannot protect the life of the people, and block the attack which jeopardises their lives, block the attack against a person or a facility being secured, prevent the escape of the persons found in committing the criminal offence, prevent the escape of arrested persons as well as of persons found in committing the criminal offence prosecuted ex officio, if they cannot do that by using some other methods or other means of compulsion.

618. The authorised official person is obliged to warn that he will use the firearms if a person fails to stop the activity for which firearms may be used. Any action of the official persons against persons while performing the official duties which is not stipulated by the positive regulations of District of Brčko B&H, and which hurts the personality, integrity, dignity and the guaranteed right, is deemed to be an element of torture, cruel, inhuman and degrading treatment.

### **Federal Ministry of Health**

619. Starting from the Article I of the General Declaration of Human Rights according to which “all people are born free and equal in their dignity and rights” - which has been pronounced also by European Convention on Human Rights according to which “the right to life of any person is protected by law” the intention of the legislator in the field of health is the protection of human rights such as the right to life. “Non est vivere, sed valere vita” (Life is not to live but to be healthy) said Martialis (40 - 104 A.D.) Thus, the right to health is the right representing the foundation of any democratic society.

620. Defining “torture” as any act by which the pain or severe physical or mental suffering is inflicted on a person, we point out that the legislature in the field of health stipulates the provisions that prevent abuse of these medical activities. Health Care is defined as a set of measures, activities and procedures in promoting the right to life, protecting and improving the health of people, being the obligation, among others, of any medical servant.

621. Stating that any activity of a medical servant performed on a patient inflicts certain pain, the Law on Health Care (Official Gazette of Federation B&H NR 29/97) in its article 26 stipulates that it is the inalienable right of any person, to refuse, among other things, any surgical and other interventions, as stated under the paragraph 10, if the person is conscious and capable of reasoning - and if a medical doctor has acquainted the person with harmful consequences for his/her health and life in case of refusing such an intervention. If a person is not conscious the approval is requested from the parents, guardian, spouse or other close member of the family, except in the case when there is a danger to life of the diseased or injured and due to urgent intervention, it is not possible to obtain the approval in due time.

622. In the field of health, special attention is paid to a person with mental disorders. This risk group required passing “lex specialis” which, besides fundamental rights of each patient stipulated under the Law on Health Care, also stipulates, in details, the fundamental rights and protection thereof, for this group of the diseased persons. That is the Law on Protection of Persons with Mental Disorders (Official Gazette of Federation B&H NR 37/01 and 40/02), which was made on the basis of the standards stipulated by resolutions adopted by General Assembly of UN, Council of Europe and World Health Organisation (WHO). The basic guidelines for making this Law were the guidelines for application of “Principles for protection of persons with mental disorders and improvement of protection of mental health” adopted by General Assembly of UN as the Resolution NR 46/119.

623. The issues of the law deal with a number of values of our as well as any other democratic society such as: protection of human rights and freedoms and establishing the criteria for their limitation.

624. The Law prescribes fundamental principles and one of the basic ones is the consent of a person suffering mental disorders at all stages of treatment. Therefore, the basic principles emphasise, in the first place, that a person with mental disorders is entitled to “equal conditions of treatment as any other person receiving health care” (article 4) and that a person “may not be put into unequal position because of his/her disease” (Article 5).

625. Speaking about persons with mental disorders we should take into consideration that their categorisation is made to:

(a) Those who can understand the nature, consequences and danger of the proposed medical treatment and, on the basis of this, they can make a decision and express their will, and

(b) Those who are not capable to understand the nature, consequences or danger of the medical treatment.

626. Independently of the category of the patient no action may be taken (from the admission to the health institution and treatment) without a written consent.

627. In the former case the written consent is given by a person (the specialist - psychiatrist is a person who, through the contact with the patient, must determine whether that person is indeed capable to give a consent which is recorded into medical documentation), and in the latter case it is given by his/her legal representative (when the psychiatrist is obliged to acquaint the legal representative with the purpose, nature, consequences, advantages and dangers of implementation of the proposed treatment). The written consent, independently of who has given it, may be withdrawn at any time.

628. If a person, although capable to understand the purpose and consequences of treatment, fails to give a consent and all cumulative conditions have been fulfilled (protection of a diseased on one hand and exercising the rights to freedom and security of other persons in the environment as well as protection of property, i.e. prevention of its destroying by the diseased person, on the other hand), the mandatory detention is applied.

629. Mandatory detention is a first step after which there is an obligation of a medical institution to, not later than within 24 hours, inform the competent court about mandatory detention submitting also the medical documentation, and the court, in the extra-judiciary procedure, makes the decision about mandatory detention of the diseased person. In this part of activity of the court, in the extra-judiciary procedure, we used to have interventions, i.e. requests through the Federal Ministry of Justice, to carry out the procedures promptly (i.e. to take care of the time limits prescribed by the Law on Extra-judiciary Procedure) in order not to have the clinical image of the patient changed since the moment of mandatory detention to the moment of arrival of the court expert. Namely, there were the cases (Public Institution "Psychiatric Hospital of Canton of Sarajevo) that since the moment of the submitted request for hospitalisation to the court, 2 to 3 weeks elapsed until the court expert visited the patient.

630. In the Article 51, the Law prescribes the obligation that, at the specialised health institutions, the Commissions for protection of persons with mental disorders should be established, with the task to monitor the implementation of protection of persons independently of whether they have been admitted upon their free will, or were compulsively detained and accommodated in the health institution. The Commission consists of the president and two members. The president must be a specialist - psychiatrist (and what is very important, he may not be the employee of that health institution), and the members are a social worker and a jurist. This structure of the Commission can meet the requirements defined in the article 52 of the Law. It is stipulated that the Commission meets at least once a month, and, if necessary, within shorter time intervals, and that its work is based on medical documentation, but also on personal contacts with medical personnel in that health institution, with the person suffering mental disorders, i.e. his/her guardian, legal representative, member of the family as well as other competent authorities of the court and administration (Centres for Social Welfare etc.)

631. We can conclude that such commissions act at the specialised health institutions: Clinic Centre of the University of Sarajevo, Psychiatric Hospital of Canton of Sarajevo, University Clinic Centre in Tuzla, Public Institution Hospital in Travnik, Canton Hospital in Zenica, Public Institution Centre for Alcoholism and Toxic-mania in Sarajevo. The Commissions submit reports on their work to Canton and Federal Ministry of Health. The fact of passing the mentioned Law, as well as objective and impartial work of the members of the commissions enabled improvement of the conditions of protection of persons suffering mental disorders and raising them to the better level. In the activities of the commissions no findings were found indicating presence of any kind of "torture". In several cases medically indicated need to use the fasteners - a means for physical limiting of movement, was recorded and it was stated in the medical documentation. In application of fasteners, according to the Law, it is ensured to have "permanent monitoring of physical and mental condition of that person by the professional medical personnel".

632. One of the inalienable rights of the patients is the right to "secrecy of all the data referring to the condition of their health". Besides this general regulation stated in the Law on Health Care (Article 26, paragraph 8), the Law on Protection of Persons with Mental Disorders, in its articles 17-20, also stipulates the obligations of the medical doctors to keep the professional secret at all stages of treatment, before the court and other competent authorities (centres for social welfare) and in the procedure of exercising the social, health, family or pension protection. Regulations of the law defined thoroughly in such a manner, are the guarantee that revealing the data inflicting mental pain of the patient may not, i.e. should not happen.

633. The Law on Medicaments (Official Gazette of Federation of B&H NR 51/01), article 28, stipulates the conditions under which the clinical tests of medicaments may be performed. The stress is put on the Helsinki Declaration of Protection of the Rights of Patients, but also on the previous approvals of the Federal Ministry of Health issuing such an approval with previous consent of Federal Ethics Commission. In this segment, special attention is paid to a person with mental disorders where the stress is put on the additional insurance borne by the producer of medicaments being submitted to clinical testing.

634. Law on Health Care (Article 26, paragraph 2) includes the right to compensation for damage among the inalienable rights (material and non-material damage), due to “providing inadequate medical service in the case of proved professional mistake”. The compensation is determined on the basis of the Law on Obligation Relations.

635. Medical Inspections act pursuant to the Law on Health Care (Canton and Federal) and in their, so far performed, activities, have not recorded any actions that could be characterised i.e. understood as “torture”.

636. We must state that in prison institution in Zenica, at the Department where the security measure of “mandatory psychiatric treatment and custody in the health institution” is carried out, the inspection supervision was performed and certain irregularities were found so that it was ordered to eliminate them. The stress was put on improvement of hygienic conditions, accommodation conditions - reduction of beds in dormitories. The supervision did not find the acts that could be understood as “torture” as it is defined by the Convention. The patients - convicted persons receive medicament therapy while occupational therapy is not sufficient.

637. Law on Health Care, Article 153, defines the Medical Association as the professional association with the task, among others, to monitor and supervise the implementation of regulations - code of medical ethics and deontology and to take measures in case of their violation.

### **Appendix of the Ministry of Health and Social Welfare of Republika Srpska**

1. The right to Health Care, as the fundamental right in any democratic society, is stipulated by the article 37 of the Constitution of Republika Srpska (Official Gazette of RS NR 21/92) and it says: “Everyone shall be entitled to health care”.
2. Furthermore, the general regulations of a democratic society, in stipulating human rights and freedoms and prevention of torture and other cruel, inhuman and degrading treatment or punishment, are prescribed by the following: Law on Health Care in RS (Official Gazette of RS NR 18/99), Law on Health Insurance in RS (Official Gazette of RS NR 18/99), Law on Medicaments (Official Gazette of RS NR 19/01), Law on Protection of Persons with Mental Disorders.
3. Article 3 of the Law on Health Care (Official Gazette of RS NR 18/99) defines health care as a set of measures in improvement and maintaining the health of the people, prevention and defeating the disease and injuries, early discovery, timely treatment and rehabilitation.
4. The Law on Health Care stipulates the rights and duties of the citizens in exercising the right to health care.
5. Article 12 stipulates that a person being tested or subjected to stationary treatment, i.e. a member of the family of the person being tested or subjected to stationary treatment, if a person is a juvenile or incapable of reasoning, or some other person having legal obligation to take care of the diseased person, is entitled to request the opinion of the consultation team of medical doctors, and the decision about the request is made by the head of the medical institution.
6. Article 13 stipulates that the data about the disease and method of treatment of the diseased person are deemed to be a medical secret and that the medical personnel may be released of the obligation to keep the medical secret only in cases defined by the law.
7. Article 11 stipulates that surgical and other medical interventions may be taken on the basis of a consent of the diseased or injured person or after obtaining a consent of the parents or a guardian if a person is a juvenile or not capable of reasoning.
8. A medical doctor is obliged to point out the consequences of refusing the intervention and in case of refusal, it is necessary to obtain the written statement provided that it is not necessary if the diseased or injured person is not conscious or there is a direct danger to life.
9. The Law on Protection of Persons with Mental Disorders has several pieces of text where it stipulates the rights of the persons suffering mental disorders and the implementation of which prevents torture.
10. Article 4 of the mentioned Law says that every person with mental disorders, irrespective of whether he/she has committed a criminal offence or not, is entitled to have good quality of care and improvement of his/her health under the equal conditions as any other citizen. A person with mental disorders is entitled to have equal conditions of treatment as any other person receiving health care service.

11. Freedom and rights of the persons with mental disorders may be restricted only by the law and if it is necessary for protection of health or security of that or some other person.
12. Article 6 of the Law states that the treatment of persons with mental disorders shall be organised in such a manner as to restrict their freedom and rights, cause physical and psychological discomfort, insult their personality and human dignity, to the least possible extent.
13. Article 9 of the Law stipulates the manner of accommodation and consent of persons with mental disorders to treatment. A person with mental disorders that can understand the nature, consequences and danger of the proposed medical treatment and who, on the basis of this, is able to make the decision and express his/her will, may be examined or subjected to medical procedure only upon his/her written consent and signing of the Contract on Treatment.
14. Ability of persons to give their consent is determined by a medical doctor or a psychiatrist at the time when such a person is making a decision and issues the written certificate accordingly. This certificate is attached to medical documentation. The person from the paragraph 1 of this article may request to have a person, enjoying his/her trust, present at the time of giving the consent.
15. A person with mental disorder who is not capable of giving a consent, either because he/she cannot understand the nature, consequences or danger of the proposed medical treatment at the time, or because at that time he/she cannot make a decision or express his/her free will, may be subjected only to such a medical treatment being in his/her best interest.
16. A child or a juvenile with mental disorder who is not capable to give a consent, may be subjected to examination or some other medical procedure only with the consent of his/her legal representative. The opinion of a juvenile must be taken into consideration in accordance with his/her age and degree of maturity.
17. An adult person with mental disorder who is not capable of giving a consent may be subjected to examination or some other medical procedure only with the consent of his/her legal representative, and if there is none,, then with the consent of the commission for protection of persons with mental disorders, if it is not urgent.
18. When the consent is given by the persons mentioned in the paragraphs 4 and 5 of this article, the psychiatrist is obliged to inform them, under the same conditions, about all facts that he is obliged to give to a person with mental disorder in case when such a person gives the consent.
19. The consent, as mentioned in the paragraphs 4 and 5 of this article, may be withdrawn at any time. The person withdrawing the consent must be explained what are the consequences of interruption of medical treatment. Withdrawal of the consent mentioned in the paragraphs 1, 4 and 5 of this article, is given in writing.
20. Waving the right of a person with mental disorders to give a consent does not cause any legal effect.

21. Article 10 stipulates that the request for a consent from the article 9, paragraphs 1, 4 and 5 is not compulsory if the process of obtaining it, would jeopardise the life of a person with mental disorder, or there would be a threat of serious and direct danger of more severe deterioration of his/her health. Medical treatment may be applied without a consent only as long as such a danger exists.
22. The head of the department in the medical institution or a psychiatrist in charge of that institution makes the decision about the necessity and urgency of certain medical procedure. He informs the legal representative of the person with mental disorder about that procedure.
23. A person with more severe mental disorder who is forcibly detained in a medical institution may be, even without the consent, subjected to examination or some other medical procedure of medical treatment of mental disorder because of which he/she has been forcibly detained in the medical institution, only if, without implementation of such a procedure, the severe damage to his/her health would occur.
24. If the medical treatment is carried out without the consent of a person with mental disorder, pursuant to paragraphs 4 and 5 of the article 9 and paragraphs 2 and 3 of this article, it is necessary, to a possible extent, to explain to that person the procedure of treatment and involve that person into planning of his/her treatment.
25. The text of the article 16 of this Law stipulates the implementation of specific therapy (electric-convulsion and hormonal treatment) and conditions under which it can be applied. The same article does not permit application of psycho-surgery and castration.
26. Article 17 stipulates that bio-medical researches on persons with mental disorders may be performed only for the purpose of studying and treatment of mental disorder following the recommendations of the Helsinki Declaration:
- (a) If there is no other appropriate possibility than to research on people;
  - (b) If the danger of research is not proportional to the benefit of the person with mental disorder;
  - (c) If the research project has been approved by Ethics Commission for mental health at the Ministry of Health and Social Welfare of Republika Srpska after performing the independent inspection of the scientific importance, importance of the objective and ethical character of the research;
  - (d) If the persons participating in the research are informed about their rights and legal protection that they enjoy;
  - (e) If the persons, participating in the research, have given their written consent that may be withdrawn at any time.
27. Bio-medical researches on the persons with mental disorders that are not able to give their consent may be performed only if, besides the prerequisites as stated under the paragraph 1 of this article, items a) to d), also the following additional prerequisites are fulfilled:

(a) If it is expected that the results of research shall be of real and direct benefit to health of that person;

(b) If the research on persons who are capable of giving a consent, would not give equally good results;

(c) If the persons stated under the article 9, paragraphs 4 and 5 of this Law have given their written consent; and

(d) If the person on whom the research is carried out, has not explicitly opposed to that and such research.

28. Bio-medical researches on children and juveniles may be performed pursuant to provisions stated in the paragraph 2 of this article, only with the consent of the commission for protection of persons with mental disorders and Ethics Commission for Mental Health. Bio-medical researches on persons who are serving the security measure of mandatory treatment are excluded.

29. Articles 19 and 20 stipulate under which conditions the authorities (Court, Ministry of Interior) may come into possession of medical documentation of the persons with mental disorders as well as how to take the statement and interrogate such a person.

30. Article 83 of the Law on Health Care (Official Gazette of RS NR 18/99) stipulates the supervision of professional work of medical institutions and medical personnel:

“The purpose of professional supervision is to establish whether the health institution and medical personnel and associates perform the medical service in accordance with the accomplishments of contemporary medical science and whether there are appropriate conditions for such a work.”

31. Article 88 of the same Law stipulates the supervision of the health inspection over implementation of the Law, other regulations and general acts as well as over the implementation of the prescribed measures in the field of health care referring to:

(a) Harmonisation of organisation and work of the health institution and other forms of performing medical activities with this Law;

(b) Performing the medical activities in compliance with this Law;

(c) Realisation of health care, i.e. other forms of medical activities;

(d) Implementation of the orders given at performance of supervision over the professional work;

(e) Other activities of supervision in compliance with the Law.

32. Article 62 of the same Law prescribes foundation of Medical Association.



33. Article 98 of the Law on Health care stipulates the punishment for violation of the law regulations.

34. The Law on Protection of Persons with Mental Disorder stipulates foundation of the Commissions for protection of persons with mental disorders which are founded at the regional level for the health institutions specialised for treatment of persons with mental disorders. Article 53 stipulates the duty of the Commission for protection of persons with mental disorders, which refers to:

- (a) Taking measures to prevent occurrence of mental diseases and other mental disorders;
- (b) Improvement of treatment of the persons with mental disorders;
- (c) Monitoring the implementation of the procedures prescribed by this Law and proposing the health institution and competent administrative authority to eliminate the observed irregularities;
- (d) Monitoring and respect of human rights and freedoms and dignity of the persons with mental disorders;
- (e) Upon the own estimation, or upon the proposal of the third party, to check individual cases of forcible detention or forcible accommodation in the health institution, i.e. accommodation of children, juveniles, persons incapable of working and adults who are not able to give their consent;
- (f) Receive the complaints and petitions of the persons with mental disorders, their legal representatives, members of the family, proxies, third persons or trusteeship authority, and take the necessary measures;
- (g) Propose to the competent court to make a decision about release from the health institution;
- (h) Perceive the conditions of work in health institutions and propose the measures for their improvement.

35. The Law on Health Insurance (Official Gazette of RS NR 18/99) stipulates the system of compulsory and expanded health insurance, rights from insurance, manner of exercising the rights and manner of private health insurance.

36. Article 4 of the mentioned Law stipulates that the rights arising from health insurance are:

- (a) Health care;
- (b) Reimbursement of salary during the temporary disability to work;
- (c) Other rights stipulated by the Law and acts of the Fund.

37. Article 7 says: Health care in terms of this Law means the measures taken to improve health and prevent and defeat the disease and injury, to discover and treat the disease early and in due time, to prevent disability and enable persons for living and working functions after the disease and injury.

38. Article 8 says: All insured persons have equal rights to health care. The Law and acts of the Fund stipulate which groups of the insured persons and what measures of health care have priority in realisation of health care and other benefits because of special social-medical status and on the basis of other criteria stipulated by the law.

39. Article 1 of the Law on Medical Association (Official Gazette of RS NR 25/03) stipulates that the medical associations of Republika Srpska are independent, professional organisations of medical doctors, doctors of stomatology, graduated pharmacists.

40. Article 5 of the same Law stipulates the activity of the Association relating to improvement of quality of health care, incentive for enactment and amendment of the laws and other regulations in the field of health care, giving the opinion about the proposal drafts and other regulations in the field of health care, enactment and improvement of the code of deontology and ethics.

41. The Law on Social Care (official Gazette of RS NR 5/93) stipulates the rights in the field of social care, basics of organisation and financing of this activity as well as other issues important for realisation of social care of the citizens.

42. Article 10 of the mentioned law stipulates that the users of social care are the persons in the state of social need, and especially:

(a) Juveniles:

- Without parental care;
- Disturbed in psychological and physical development;
- Whose development is disturbed by family circumstances;
- Neglected in education and breeding;

(b) Adults:

- Materially non-provided and incapable for work;
- Old persons without family care;
- Disabled persons;
- Persons with socially negative behaviour;
- Persons who need social care due to special circumstances.

43. Article 20 of the mentioned law stipulates the rights in social care such as: material insurance, family allowance for taking care of another person, support to children and youth for training for work, accommodation in the institution for social care or accommodation in another family and services of social work.
44. Article 70 of the law stipulates the procedure of exercising the right to social care.
45. Article 74 of the law stipulates that the municipality in whose territory is the person in social need is found, is obliged, due to special circumstances from the article 19 of this law, to provide that person with appropriate support in order to eliminate direct danger to his/her life and health.

**Data referring to the department of forensic psychiatry  
in Sokolac and Institution "Jake" Modria**

46. Although by the decision of the Government of Republika Srpska from 1993 it was pronounced to be a special hospital, the Department of Forensics functions as the organisational unit of the Psychiatric Hospital, i.e. the Clinic in Sokolac.
47. The Department is located in the building complex built in 1920. Half of this complex was reconstructed in 1997 by MSF. Its net surface is 735,30 m<sup>2</sup>, and gross surface is 827,60 m<sup>2</sup>. The other half is in erosive condition and has never been reconstructed. Its net surface is 1.856,10 m<sup>2</sup> and gross surface is 2.096,25 m<sup>2</sup>.
48. The used space includes: rooms for the patients, living room, rooms for personnel. The restaurant and rooms for working-occupational therapy are used jointly at the level of the Clinic. Court female patients are not adequately accommodated. They are accommodated at the female department for acute diseases and at the female rehabilitation department.
49. The following personnel work at this department of forensics: one doctor - psychiatrist, nine guards. The mentioned employees have identity cards of the Ministry of Justice. Then, there is one psychologist, one social worker, five nurses, one nurse who is the head nurse of the department, one housecleaner. The employees of the accounting department of the Clinic, restaurant, kitchen, technical service, personnel for working-occupational therapy also serve this department.
50. Regarding the equipment of the department, it is modest and the positive therapeutic surrounding is very poor. The equipment consists of the most basic elements. The reason for this situation is only lack of financial resources because the department is supported by the grant from the budget of Republika Srpska, and it amounts to 52.000,00 KM per month. The most urgent problem that should be resolved within the shortest period is reconstruction of the roof of the part of the building being used, reconstruction of the sewage system, reconstruction of the front face of the building as well as of the restaurant.
51. According to the official report from the department there was one case of violation of the standards of CPT by a medical technician on 7.1.2003.

52. In 1999 one case of violation of human rights was recorded, and the disciplinary proceedings were conducted.

53. In 2003 Ombudsman of Republika Srpska received a complaint by Mr Rade Bartula, which opened the issue of violation of the article 3 of European Convention on Protection of Human Rights and Fundamental Freedoms (Convention), which says:

“No person shall be subjected to torture, inhuman or degrading punishment or treatment”.

54. Upon the request of the Ombudsman of Republika Srpska, the Commission of the Ministry of Health and Social Welfare of Republika Srpska investigated the complaint of Mr. Rade Bartula, pursuant to general duties from the article 1 of the Convention, that the state party guarantees rights and freedoms to any person in the territory under its jurisdiction, as defined by the Convention.

55. European Commission for prevention of torture, inhuman and degrading treatment and punishment (CPT) visited the Psychiatric Hospital in Sokolac in the period from 1. to 3.5.2003. After the departure of the delegation the Psychiatric Hospital in Sokolac started the analysis of the situation with a special attention to remarks stated by the delegation. Majority of the remarks referred to the male department for acute diseases.

56. Meanwhile, certain changes have happened at this department and they are as follows:

(a) 30% of the patients were released from the department (and so far they have not been taken over by the relatives) so that, at the moment, there are 17-20 patients at the department which, certainly, has the impact on the overall atmosphere, considering that this number of patients presently has sufficient space and that it is easier to maintain hygiene;

(b) Furthermore, the standards of CPT as well as the order on their application have been submitted to all departments in writing with the obligation to record any usage of methods of compulsion, restriction of movement and fixation;

(c) The patients are acquainted with their rights at the therapeutic group treatments;

(d) Social-geriatric centre is the institution founded in 1946 and since then up to now there has been enlargement of the capacity which increased the number of beneficiaries. After reconstruction and additional building within the period 1997-1998 the conditions for better living, working and accommodation of the beneficiaries have been improved much and the setting for decent living and stay has been created. Simultaneously with reconstruction, also the adequate equipment for the kitchen, laundry room and adequate medical equipment have been procured;

(e) In the social-geriatric centre there are 74 employees of which the majority are of medical profession - nurses - technicians, orderlies, who are taking care of providing medical services and health care. One general practitioner is employed on full time basis at the centre, and in order to achieve the most adequate health care the medical doctors - specialists as consultants are permanently engaged, such as: a specialist for internal diseases, a specialist-psychiatrist. Co-operation with the Medical Centre and Clinic Centre in Banja Luka is on a satisfactory level, so that, all the beneficiaries, when necessary, are accommodated and treated at this Clinic Centre;

(f) Other personnel is distributed in departments for nutrition, maintenance, technical service, administrative-accounting service. The Centre also employs three social workers;

(g) Within the Social-geriatric Centre there is also a closed-type department for accommodation of mentally retarded persons in the territory of Local Community Dragočaj, which is some 10 km away from Banja Luka;

(h) Upon the decision of the Ministry of Health from 1995, i.e. 1996 this Centre was entrusted for care of refugees and displaced persons accommodated at the Monastery near Aleksandrovac where around 100 people used to be until 2000, when the Monastery was returned to the owner and the refugees had to be dislocated;

(i) Present capacity of the Centre is 300 beds and, at the average, the utilised capacity is 275 beneficiaries of the services;

(j) The average age is over 75 years, and, at the average, there are 2/3 of women;

(k) All categories of old people are admitted, the most numerous of which are: hardly mobile or completely immobile, demented people, psychologically changed people as well as psychologically healthy mobile old people;

(l) This Centre has always tried to provide old people with the best possible living conditions because it is a replacement for their home and family.

57. The basic reasons to accommodate such people are: disease of the old, self-support, unresolved residential problems, conflicts in the family. In case some of the problems are resolved, the old people are returned to their previous environment. Due to their age and diseases which they also suffered in the past, many old people have found their final shelter here.

58. The Institution "Jake{" deals with rehabilitation, treatment and social care of chronic mental patients and from the organisational aspect it is divided into the following departments:

- (a) Rehabilitation department - Pavilion "Morava" - mixed;
- (b) Open Department for Men;
- (c) Department for Immobile Persons - Pavilion "Dunav";
- (d) Open Department for Women;
- (e) Somatic Department - Pavilion "Pliva";
- (f) Department for Acute Diseases for Men;
- (g) Department for Acute Diseases for Women - Pavilion "Sana";
- (h) Department "Viegrad".

**The Institution for female children and youth from Viegrad with temporary accommodation at the Institution “Jake”**

59. The Institution “Jake” has not the department nor capacity for treatment of the court (forensic) cases.

60. The Institution “Jake” disposes of two departments: For Acute Diseases for Men and for Women. These two departments have been founded for intense psychiatric treatment and supervision of chronic patients whose condition of basic chronic disease is made acute or exacerbated during the rehabilitation treatment at this Institution.

61. These two departments function as closed-type departments.

The surface is 90 m<sup>2</sup> each.

The capacity of the department for men is 22 beds, and for women it is 18 beds.

Personnel:

5 medical technicians for each department for working in turns;

1 department medical technician for both departments;

1 social worker;

1 psychiatrist;

1 orderly;

1 cleaning person.

62. Other personnel also participate in activities of these departments (psychologist, specialist for internal diseases, specialist for pulmonary diseases, working therapists, hairdressers, etc.).

63. Because of the nature of the acute psychiatric disorders that sometimes occur with the chronic patients, the intense supervision and monitoring of the condition is carried out by the personnel.

64. The conduct of personnel is professional, adequate, human and it has never been recorded that there was torture or other cruel and inhuman treatment of the patients. What is important to emphasise is that the aggressiveness and conflicts among the patients are monitored by the personnel and prevented by application of permitted methods such as body fixation by fasteners or accommodation in the closed-type department with intense medicament therapy and permanent supervision of the condition of the patient.

65. In spite of all the measures in the Institution within the above stated period, there were two cases of homicide where both the perpetrator and the victim were the patients.

66. The first case happened on 10.7.1999 when a patient, born in 1944 in psychotic condition, killed another patient, born in 1944. After this incident the police and court activities were carried out, the case was processed at the District Court in Doboj, but the proceedings have been dismissed because the perpetrator died on 25.12.1999 after having suffered the brain stroke. The Institution has the document - Decision of the District Court in Doboj dated 10.4.2002, KV-21/02.

67. The other case of homicide happened on 20.8.2001 when a newly admitted patient, born in 1975, immediately after having been accommodated at the closed-type department for men, killed three patients. This case of triple murder, too, was investigated and processed at the District Court in Doboj, but this patient was immediately arrested and further expertise was performed during his stay at the Investigation Prison in Doboj. The Institution has not been informed about the results of investigation and the trial nor has it any documents about it.

68. The Institution "Jake{" , generally, does not admit the psychiatric patients who already have the court sentence but, at the moment, in this Institution, there are two patients who, due to the criminal offence committed before admission in this Institution, were tried and the court sentences were pronounced.

69. These are:

(a) A person against whom the proceedings were conducted before the Basic Court in Banja Luka in 2002 due to the criminal offence of theft committed in 1993. In the proposal, the security measure and mandatory psychiatric treatment and custody in psychiatric institution were pronounced. The decision of the Court has not been submitted yet, and the patient is recorded with the diagnosis: Schizophrenia-hebefrenia chr. The accompanying disease that was treated and cured during the stay at the Institution was: Tbc. pulm.sec.fibrosa partim productiva lobi sup.1 dex. The patient was admitted at the Institution on 3.11.1999 and he is still there;

(b) A patient against whom the security measure of mandatory psychiatric treatment at large was pronounced by the decision of the Basic Court in Banja Luka, and we are in possession of the Decision of the Basic Court Banja Luka NR K.-625/02 dated 18.10.2002. The criminal offence for which this measure was pronounced was committed by the patient on 06.8.1999 and he has been treated at this Institution since 1.2.2000. The basic diagnosis of the disease is: Schizophrenia chr. The accompanying disease which the patient got while being treated at the Institution was Dg: Infiltratio pulm. hilobasilis 1. dex in regressionem susp. specifica.

**TABELARNI PRIKAZ IZ IZVJEŠTAJA**

**Table 1**

**The table shows the work with the clients of  
psychological-psychiatric counselling centre**

The reason for coming/year	1993-95	1996-99	2000-02	Total
Psychological consequences of war and post-war stress and trauma	76	169	173	418
Psychological consequences of the loss	5	58	45	108
Psychological consequences of rape in the war	15	42	20	77
Psychological consequences of violence or rape in the family	5	85	199	289
Psychological consequences of violence/rape in the community	0	26	54	80
The problems with studying and development disorders	4	140	76	220
Family and marriage problems	0	189	440	629
Various psychological and psychiatric disorders	34	171	101	306
Psychosis	19	52	16	87
Various neurological/psychiatric disorders	10	79	36	125
Social and material problems	918	256	62	1 236
Burn out	0	11	2	13
Addiction	0	3	4	7
Returnees	0	1	3	4
Personality disorders	0	1	0	1
Refugees (Kosovo)	0	9	2	11
Sexual disorders	0	1	0	1
Maternity protection	0	0	16	16
Work with violent persons	0	0	9	9
Unclassified reasons for coming	192	10	6	208
Total Zenica	1 278	1 303	1 264	3 854
Total Visoko			352	352
Total Medica	1 278	1 303	1 616	4 197



**Table 2**  
**Use of the methods of compulsion**

Year	Use of methods of compulsion		Application of the methods of compulsion			Consequences of force		
	Open space	Closed space	Physical power	Baton	Firearms	Slight injuries	Severe injuries	Dead
1	2	3	4	5	6	7	8	9
2000	0	0	0	0	0	0	0	0
2001	11	0	9	0	3	1	0	0
2002	20	0	16	0	4	0	0	0
2003	7	1	8	0	1	1	0	0
Total	38	1	33	0	8	2	0	0

**Table 3**  
**Threats to the persons by the officials of the service**

Year	Item	Case conducted on the basis of the submitted complaint	Case conducted on ex officio basis	Number of persons having been threatened	Measures taken
1	2	3	4	5	6
2000	-	-	-	-	-
2001	1	x		1	fine
2002	1	x		1	fine
	2	x		1	fine
	3		x	1	fine
2003	1	x		1	fine
Total		4	1	5	

**Table 4**

**Tabulation of the use of methods of compulsion  
for the period 1996 to 30 June 2003**

Use of methods of compulsion	1996	1997	1998	1999	2000	2001	2002
Total number of cases with compulsion methods used	1 193	1 165	1 146	1 168	2 201	2 211	
Total number of justified methods of compulsion	1 186	1 156	1 138	1 164	1 196	2 207	
Total number of unjustified uses of methods of compulsion	77	99	88	44	55	44	
The ongoing procedure to determine justification							
Number of uses of firearms	221	117	117	111	220	99	
(a) Justified	118	117	114	110	116	88	
(b) Unjustified	33	-	33	11	44	11	
(c) Ongoing procedure to determine justification							
Number of uses of gas weapons and chemicals	66	77	88	-	11	22	
(a) Justified	66	66	88	-	11	22	
(b) Unjustified	-	11	-	-	-	-	
(c) Ongoing procedure to determine justification							
Number of uses of physical power	1 126	1 103	1 102	1 136	1 167	1 187	
(a) Justified	1 123	598	498	2 134	1 166	3 184	
(b) Unjustified	33	55	44	22	11	33	
(c) Ongoing procedure to determine justification							
Number of uses of a rubber baton	440	338	119	221	113	113	
(a) Justified	339	335	118	220	113	113	
(b) Unjustified	11	33	11	11	-	-	
(c) Ongoing procedure to determine justification							
The most frequent basis to use firearms							
Protection of life of citizens	11	-	-	-	44	11	
Prevention of escape of the person found in committing the criminal offence	11	1-	22	99	55	-	
Prevention of escape of the person arrested and the persons the warrant for whose arrest has been issued for the committed criminal offence	22	11	-	-	-	11	
Blocking the attack against the safeguarded building	-	11	11	1			
Blocking the direct attack jeopardizing the life of the official	113	117	88	33	77	77	
Consequences of the used methods of compulsion							
Number of killed persons	-	-	-	-	11	-	
Number of severely injured	11	11	-	11	22	44	11
Number of slightly injured	14	9	6	17	46	22	48

**Table 5**  
**Tabulation of physical attacks against officials**

Year	1996	1997	1998	1999	2000	2001	2002	2003 - 6 months	Total
Total number	196	144	123	98	105	128	137	66	997
Consequences - number of injured	77	77	58	56	85	77	119	46	595
(a) Killed	2	1	1	2					6
(b) Wounded	3	2	5				2		12
(c) Severely wounded	9	8		4	5	4	5	4	39
(d) Slightly wounded	63	66	52	50	80	73	112	42	538

**Table 6**  
**Illegal crossings of the State border**

Item	Citizenship	Number of persons against whom the indictment was submitted				Total
		2000	2001	2002	2003	
1	B&H	3	33	33	5	74
2	Serbia and Montenegro	7	5	4	1	17
3	R Croatia	0	0	2	1	3
4	Slovenia	1	0	0	2	3
5	Turkey	0	1	0	0	1
Total		11	39	39	9	98

**Table 7**

**Persons assumed to be the victims of the trafficking women and children**

Year	Citizenship of the found persons	Number of found persons	Request for processing submitted	Number of handed over persons
2000	Moldavia	14	0	0
	Ukraine	20	6	0
	Romania	15	0	0
	Total	49	6	0
2001	Moldavia	75	6	6
	Ukraine	76	4	2
	Romania	73	1	1
	Serbia and Montenegro	1	1	0
	Russia	1	1	1
	Total	226	13	10
2002	Moldavia	111	3	2
	Ukraine	108	1	1
	Romania	115	6	5
	Bulgaria	1	0	1
	Total	335	10	9
2003	Moldavia	38	1	0
	Ukraine	39	0	2
	Bulgaria	3	1	0
	Romania	44	1	1
	Russia	3	1	0
	Serbia and Montenegro	1	0	1
Total		128	4	4
Grand total		738	33	23

**Table 8**

**Number of recorded persons assumed to be the victims of trafficking in people**

Item	Citizenship	2000	2001	2002	2003	Total
1	Moldavia	14	75	111	38	238
2	Ukraine	20	76	108	39	243
3	Romania	15	73	115	44	247
4	Serbia and Montenegro	0	1		0	1
5	Russia	0	1	0	3	4
6	Bulgaria	0	0	1	3	4
Total		49	226	335	128	738

**Table 9**

**A person assumed to be the victim of trafficking in  
women and children taken over by IOM**

Item	Citizenship	2000		2001		2002		2003		Total	
		Taken-over	Repatriated	Taken-over	Repatriated	Taken-over	Repatriated	Taken-over	Repatriated	Taken-over	Repatriated
1	Moldavia	97	91	80	67	109	71	10	7	296	236
2	Romania	65	60	89	78	92	52	4	3	250	193
3	Ukraine	31	27	15	19	32	13	4	2	82	61
4	Belarus	1	1	4	4	1	0	0	0	6	5
5	Russia	2	1	6	7	11	8	1	0	20	16
6	Serbia and Montenegro	2	2	6	1	6	2	2	1	16	6
7	Hungary	1	1	0	0	0	0	0	0	1	1
8	B&H	0	0	0	0	3	0	2	0	5	0
9	Bulgaria	0	0	0	0	1	0	0	0	1	0
Total		199	183	200	176	255	146	23	13	677	518

**Table 10**

**Statistic data on willing repatriation**

Item	Citizenship of illegal immigrants	Number of willingly repatriated illegal immigrants				Total
		2000	2001	2002	2003	
1	Romania	0	11	6	1	18
2	Moldavia	0	7	10	1	18
3	China	0	6	4	25	35
4	Turkey	0	28	14	4	46
5	Ukraine	0	2	3	0	5
6	Macedonia	0	2	8	10	20
7	Albania	0	1	32	30	63
8	Serbia and Montenegro	0	20	57	63	140
9	Iran	0	0	0	0	0
10	Bulgaria	0	0	2	0	2
11	Hungary	0	0	5	0	5
12	Slovakia	0	0	1	0	1
13	Philippines	0	0	0	1	1
Total		0	77	142	135	354

**Table 11****Persons who applied for a refugee or asylum refugee status**

Year	Citizenship	Number of persons requesting admission		Number of persons handed over to international organizations
		Border crossing	Protected BC area	
2000	Iraq	1	0	1
	Iran	1		1
	Serbia and Montenegro	3		3
	Total	5	0	5
2001	Serbia and Montenegro	73	7	80
	Iraq	0	10	10
	Iran	0	5	5
	Pakistan	0	5	5
	Macedonia	10	0	10
	Romania	0	2	2
	Albania	0	2	2
	Moldavia	0	2	2
Total	83	33	116	
2002	Serbia and Montenegro	35	3	38
	Turkey	9	4	13
	Moldavia	2	0	2
	Romania	1	0	1
	Albania	7	3	10
	Pakistan	3	6	9
	Macedonia	3	2	5
	Iran	4	0	4
	Morocco	2	0	2
Total	66	18	84	
2003	Palestine	1	0	1
	Serbia and Montenegro	29	10	39
	Turkey	2	0	2
	Albania	2	0	2
	Algeria	0	4	4
	Unknown	3	0	3
Total	37	14	51	
Grand total	191	65	256	

**Table 12**

**Foreign citizens - the applicants for the asylum recorded by UNHCR**

Item	Citizenship	2000		2001		2002		2003		Total	
		Requested	Approved	Requested	Approved	Requested	Approved	Requested	Approved	Requested	Approved
1	Afghanistan	1	0	3	0	0	0	0	0	4	0
2	Albania	0	0	3	0	2	0	0	0	5	0
3	Algeria	2	0	1	0	1	0	0	0	4	0
4	Angola	0	0	1	0	0	0	0	0	1	0
5	Azerbaijan	0	1	0	0	0	0	0	0	0	1
6	Bangladesh	20	0	11	0	1	0	9	0	41	0
7	Ethiopia	0	0	0	0	0	0	1	0	1	0
8	India	0	0	9	0	0	0	0	0	9	0
9	Iran	203	13	110	21	18	4	0	0	331	38
10	Iraq	15	9	36	9	10	5	0	0	61	23
11	Jordan	0	0	0	0	1	0	0	0	1	0
12	China	0	0	30	0	0	0	0	0	30	0
13	Macedonia	0	0	313	0	75	0	9	0	397	0
14	Moldavia	0	0	2	0	10	0	4	1	16	1
15	Nigeria	0	0	2	0	0	0	0	0	2	0
16	Palestine	0	0	5	2	1	0	3	0	9	2
17	Pakistan	8	0	35	0	0	0	0	0	43	0
18	Romania	2	0	7	1	3	0	4	0	16	1
19	Russia	0	0	2	0	1	0	0	0	3	0
20	Serbia and Montenegro	0	0	39	0	436	79	491	4	966	83
21	Sierra Leone	0	0	6	0	0	0	0	0	6	0
22	Syria	0	0	2	0	0	0	1	0	3	0
23	Sri Lanka	7	0	0	0	0	0	0	0	7	0
24	Tunisia	0	0	3	0	7	0	5	1	15	1
25	Turkey	3	0	107	3	2	0	0	0	112	3
26	Ukraine	1	0	0	0	1	0	0	0	1	0
27	Yemen	0	0	0	0	5	0	13	0	18	0
28	Not determined	0	0	0	0	5	0	13	0	18	0
Total		262	23	727	36	575	88	542	6	2 106	153

**Table 13**

**Review of using methods of compulsion**

Year	Number of comp. methods	Tying	Body power	Rubber baton	Water cannon	Chemicals	Firearms	Justified	Unjustified
1996	7	2	2	3	-	-	-	6	1
1997	13	3	3	7	-	-	-	12	1
1998	12	2	5	5	-	-	-	10	2
1999	8	2	3	3	-	-	-	8	-
2000	11	3	4	4	-	-	-	11	-
2001	10	2	3	5	-	-	-	9	1
2002	12	2	5	5	-	-	-	11	1
2003	4	-	2	1	-	-	-	4	-
(30.6)									
Total	77	16	29	33	-	-	-	71	6

**Table 14**

**Review of accommodation capacities in accordance with the provisions and standards of CRT/4 m<sup>2</sup> 8 m<sup>3</sup> per person**

Name of institution	Convicted	Detained	Total
Prison Foča/Srbinje	270	-	270
Prison Banja Luka	178	80	258
Prison Srpsko Sarajevo	80	65	145
District prison Bijeljina	57	50	107
District prison Doboj	65	43	108
District prison Trebinje	40	32	72
Total	690	270	960

**Table 15**

**Review of the number of detained persons within the period 1 January 1996-30 June 2003**

Prison	1996	1997	1998	1999	2000	2001	2002	2003
Prison Banja Luka	427	451	448	428	325	330	342	242
Prison Foča/Srbinje	73	71	30	61	46	-	-	-
Prison Srpsko Sarajevo	55	41	59	64	105	114	135	92
District prison Bijeljina	266	247	230	190	190	225	212	124
District prison Doboj	157	172	114	101	110	94	148	101
District prison Trebinje	-	-	-	-	28	87	96	73
Total	978	982	881	844	804	850	933	632



**Table 16**

**Table presenting a number of the convicted persons who attended the request reports and submitted the complaints and petitions to different authorities and institutions**

Year	Number of convicts at the request report meetings	Number of complaints to Ministry of Justice of RS	Number of complaints to Ombudsmen of RS and B&H and OHR	Number of complaints to other institutions and authorities
1996	372	27	-	13
1997	436	31	-	14
1998	460	30	-	17
1999	456	33	-	21
2000	475	45	-	20
2001	691	38	8	23
2002	758	51	11	27
2003 (30.6)	449	27	5	16
Total	4 097	282	24	151



**Appendix 2**

**Table 2**

**If you think there is a need to hold more seminars on this topic, which topic would you propose?**

Professors - Police Academy Sarajevo	Cadets - Police Academy Sarajevo
Specific examples Group psycho-therapy, stress and coping with it Police torture - application of authorizations Prevention PTSD Stress at work Torture in the police	About torturers Adaptation of victims in the environment A real person - a victim of torture should be brought in Corruption in the police How to recognize such a person in the street and help Organized crime, terrorism Rights of the victims in further life Torture of children

**Do you have any objections referring to the seminar?**

Professors - Police Academy Sarajevo	Cadets - Police Academy Sarajevo
More practical examples Should last longer Too much text on plastic sheets	More examples It lasted too long Video presentations should be used

**Do you have any proposals relating to the seminar?**

Professors - Police Academy Sarajevo	Cadets - Police Academy Sarajevo
Other topics More practical examples About legal regulations More seminars for public institutions To hold the same seminar for the cadets To present films or photographs of the victims	Concrete examples Less expert terms More about the relation policeman - other person More statistics Video presentations

-----