

NPM OBSERVATORY

Observation visits to the National Preventive Mechanism of Serbia

19 and 20 June 2017 & 18 and 22 June 2018

18 May 2019

NPM Observatory Registered Office:

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EXECUTIVE SUMMARY

INTRODUCTION

- I. NPM Observatory (NPM Obs) is an international not-for-profit organisation registered as an association under French law. It is a new monitoring initiative that offers the national mechanisms for the prevention of torture (NPMs) the opportunity for independent observation and analysis of their capacity to effectively carry out the global task assigned under the Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (OPCAT). [Paragraphs 1-9].
- II. This document sets out the main observations and suggestions of issues the NPM of Serbia may wish to consider following two visits by NPM Obs to the NPM from 19 to 20 June 2017 and 18 to 22 June 2018. [Paragraph 10]
- III. NPM Obs is grateful for the invitation from the Republic of Serbia Protector of Citizens to carry out our visits and for the kindness and openness with which the NPM Obs delegation was treated by the Deputy Protector of Citizens and Head of the NPM, and the NPM Secretariat.
- IV. The preliminary visit was undertaken by Professor Nick Hardwick and Dr Alan Mitchell. The main visit was undertaken by Professor Hardwick and Dr Pétur Hauksson. They were accompanied by NPM Obs interpreters where necessary. [Paragraphs 11-14]
- V. The NPM Obs delegations met with members of the NPM, state authorities and other stakeholders of the NPM during the preliminary visit. On the main visit the NPM Obs delegation accompanied the NPM on visits to a special psychiatric hospital in Kovin on 19 June, a penal correctional institution (prison) on 20 and 21 June and an evening visit to a police station on 20 June. The NPM Obs delegation observed the preparations prior to and debrief following these visits. [Paragraphs 15-17]
- VI. It is important to recognise that the presence of international observers on the NPM's visits had certain distorting effects and these observations should be interpreted in the light of that caveat. [Paragraph 18]

CONTEXT

- VII. The Republic of Serbia became a State Party of the OPCAT on 26 September 2006. The Protector of Citizens was designated as the NPM of Serbia in July 2011. The NPM is the 'Ombudsman plus' model and the Protector of Citizens collaborates with the Provincial Ombudsman and a number of NGOs to deliver NPM responsibilities. Initially nine NGOs were selected to work with the NPM but the number had reduced to four by the time of our second visit. In 2016, the last year for which an annual report is available in English, the NPM carried out a wide range of visits to 92 institutions and issued 54 reports. The NPM has been active in co-operating with the

Subcommittee on Prevention of Torture, other regional NPMs and international bodies. [Paragraphs 19-25, 29-31]

- VIII. The leadership of the NPM changed over the course of our visits. Mr Zoran Pasalić was appointed as the new Protector of Citizens in July 2017 following the resignation of his predecessor in February 2017 and a period of interim arrangements. These changes had been the subject of some controversy. [Paragraphs 26-28]
- IX. In 2016 and 2017 the NPM had responded to issues arising from large migrant movements through the country but these issues had reduced in 2018. [Paragraphs 32-33]
- X. The European Committee for the Prevention of Torture (CPT) has carried out five visits to the Republic of Serbia since 2004. The reports of the visits in May 2015 and June 2017 raised significant concerns of ill-treatment by police officers. These concerns were not reflected in the NPM's own reports and the NPM Obs delegation was interested to establish what accounted for this discrepancy. [Paragraphs 34-35]

OBSERVATIONS AND SUGGESTIONS

Criterion 1 - Independence

Observations

- XI. The NPM of Serbia has its mandate clearly set out in law and in general has a strong legal basis for its role. There appeared to be some tensions between the overall responsibilities of the Protector of Citizens and the independence of the NPM. Useful changes had been agreed in 2015 to establish the NPM as a separate unit within the Protector of Citizen's office. Nevertheless, since 2017 the Protector of Citizens had exercised his authority over the NPM in a number of significant ways, including requiring the process for the re-appointment of NGOs to collaborate with the NPM to be re-run in 2018, restricting the NPM's use of external experts, prohibiting the NPM from visiting police stations for a three-month period and withdrawing the security clearances of most of the NPM's staff. Some of these measures had restricted the number of visits the NPM was able to undertake. [Paragraphs 36-49]

Suggestions

- XII. *The NPM should request the support of the SPT, in accordance with Article 11 (b) (iv) of the OPCAT, to encourage the national authorities to implement the SPT's guidance on 'Organizational issues regarding national preventive mechanisms that form part of a national human rights institution'. In this regard, NPM Obs suggests focussing on giving financial autonomy to the NPM and creating a 'flat' rather than hierarchical relationship between the Protector of Citizens and the Head of the NPM.*

Criterion 2 - Mandate and powers

Observations

- XIII. The powers, rights and duties of the Protector of Citizens are set out in the Law on the Protector of Citizens but the specific powers, duties, immunities and safeguards of those working for or assisting the NPM are not set out in legislation. In practice the NPM's own published methodology sets out how it addresses some of these issues and it generally has unrestricted access to all places of deprivation of liberty and can interview persons deprived of their liberty in private. [Paragraphs 51-55]

Suggestions

- XIV. *To ensure that the NPM's powers and duties, immunities and privileges have a solid basis, it would be desirable for them to be specifically set out in legislation. The changes in the leadership of the NPM and organisational issues referred to above illustrate the need for such a development.*

Criterion 3 - Organisation and resources

Observations

- XV. The central body of the NPM consists of the Deputy Protector of Citizens and a four-person secretariat. The NPM Obs delegation was very impressed by the commitment and diligence of these central staff whose activities were well organised. It appeared that the secretariat staff worked at a level well beyond their actual grade. The NPM may be joined on visits by personnel from NGOs, the Provincial Ombudsman and external experts. The central body was appropriately equipped. The NGOs collaborating with the NPM were impressive. The Provincial Ombudsman had limited capacity to play a full role in the NPM's activities. Despite the hard work of all parts of the NPM, its effectiveness was limited by a lack of resources and NPM Obs hopes means will be found to increase these. Good relationships existed between the different parts of the NPM and between the NPM and the representatives of the ministries NPM Obs met. [Paragraphs 57-71]

Suggestions

- XVI. *It is suggested that the NPM in conjunction with the relevant bodies reviews the funding, salaries and other resources available for all parts of the NPM to ensure it is adequate to cover the costs of their activities and properly reflects their status and responsibilities.*

Criterion 4 - Standards

Observations

- XVII. The NPM makes good and explicit use of most relevant international standards to assess places of deprivation of liberty. The NPM carries out the task of preventing inhuman or degrading treatment diligently, efficiently and with commendable focus.

However, preventing torture requires greater explicit focus in all its visits.
[Paragraphs 73-77]

Suggestions

XVIII. *It is suggested that the NPM prioritises its main task of the prevention of torture for example by making it a specific 'theme' within the NPM's thematic approach (see paragraphs XXV and 104) in all its visits and including it as a separate chapter in all its reports.*

Criterion 5 - Places to visit – knowledge and access

Observations

XIX. The NPM took a broad view of its remit. With some exceptions it was confident it knew the location of all places of deprivation of liberty and had access to them.
[Paragraphs 79-83]

Criterion 6 - Regularity of visits

Observations

XX. The NPM worked hard to carry out a large number of visits with limited resources. Visits could consist of a systematic examination of a place of deprivation of liberty, follow-ups of previous recommendations or examination of a particular issue (all of these types of visits were usually only announced shortly before they took place), or an unannounced response to emergency issues on an ad hoc basis. Visits took place in accordance with a carefully established visit plan and focussed on different issues from year to year. Visits were generally brief, or of one or two days' duration, and this limited their effectiveness. [Paragraphs 84-92]

Suggestions

XXI. *It is noteworthy that the NPM carries out a large number of visits with limited resources. All NPMs have to strike a balance between the frequency of their visits and the length of and personnel involved in individual visits. The NPM of Serbia carries out proportionately more but shorter visits than some other NPMs in Europe. After seven years of visiting experience, the NPM may wish to consider undertaking fewer visits of longer duration and preferably with larger teams to carry out more in-depth monitoring and ensure it obtains a deep understanding of each institution it visits. Such an emphasis and arrangement would enable the increased emphasis on the NPM's main task, the prevention of torture, as suggested in XVIII above.*

Criterion 7 - Visit teams

Observations

XXII. The NPM's central personnel are well balanced and in the past additional experts or NGO personnel could be used according to need. This included access to doctors

who supported its visits as provided for by legislation. It is a concern that restrictions on the NPM's use of experts may limit this in future. The visit teams the NPM Obs delegation accompanied were well qualified for their work but the experts were not always fully utilised. There was limited training available for the NPM's central team and none for the Provincial Ombudsman's staff, NGOs or experts on their NPM responsibilities. [Paragraphs 94-100]

Suggestions

- XXIII. *The NPM's visit teams should continue to include relevant medical and other experts as necessary and these experts should be fully involved in the planning and conduct of the visit.*
- XXIV. *The NPM may wish to consider making relevant training available to all those who participate in its visits including Provincial Ombudsman staff, NGOs and experts and making appropriate financial arrangement to enable these personnel to attend.*

Criterion 8 - Conduct of visits

Observations

- XXV. The NPM has a clear and appropriate structure for its visits. The planning for the visits NPM Obs accompanied to the prison and psychiatric hospital was exemplary and where possible fully integrated all members of the visit team (some medical experts who attended the visits were unable to be present at this meeting). Team members were given responsibility for specific thematic areas during a visit. [Paragraphs 103-115]
- XXVI. NPM Obs' presence made the conduct of visits more difficult but notwithstanding this and despite the good planning, the conduct of these visits sometimes appeared to lack focus. In relatively short visits the whole team spent a long time in initial formal preliminaries. With some exceptions, appropriate attention was paid to the relevant standards. There was a focus on important issues of material conditions, procedural irregularities with categorisation and administrative matters but more attention was needed during the visits to issues having a direct bearing on the prevention of torture. The questioning of team members was generally skilful and team members were observant and thorough. In the visit to the psychiatric hospital, the medical experts on the visit team did not appear to be fully utilised to ensure sufficient focus was given to some important risks and areas of concern such as over-medication. On a small number of occasions there was a risk that institution staff might have overheard team members' interviews with patients and prisoners. Good use of a camera was made to record what the team observed and documentation. The team met regularly through the visit to cross-check their findings. Feedback at the end of the visit would have benefitted from greater structure. [Paragraphs 116-130]
- XXVII. The visit to the police station was more challenging. The NPM Obs delegation had noted differences between the findings of the CPT and the NPM in relation to torture and physical-ill treatment: in 2016 the NPM reported torture and ill-treatment was

not "systemic"; in its report of its 2017 visit, the CPT stated ill-treatment was "accepted practice". The NPM's reception at the police station to which the NPM Obs delegation accompanied them was hostile and appeared to be indicative of attitudes to the NPM. Conditions for detainees were poor. The members of the NPM visit team and the NPM Obs delegation saw blood in one of the cells and heard sounds of a detainee in distress. The complaints register was not available. The NPM did not follow-up any of these concerns during the course of the visit and the NPM Obs delegation considered the lack of effective and timely follow-up hindered the NPM's ability to substantiate information or suspicions that might indicate individual or general ill-treatment, especially when seen in the light of the variance between the NPM's and CPT's reports about the prevalence of such ill-treatment. These issues were however robustly addressed in the draft report of the visit and in view of the pressures the NPM was under, this required courage by the NPM and a determined assertion of its independence. [Paragraphs 131-141]

XXVIII. The NPM Obs delegation concluded that the lack of follow-up of concerns during or immediately after the NPM's visits themselves arose from a combination of factors:

- a. A policy of trying to visit as many establishments as possible, limiting the possibility to undertake in-depth monitoring;
- b. A lack of training and resources;
- c. A focus on material conditions, procedural irregularities with categorisation and administrative matters and a lack of specific focus on issues/information directly related to possible torture;
- d. A lack of clear encouragement by the leadership of the NPM and the Protector of Citizens' office to gather information on cases of possible ill treatment by the police;
- e. A decision not to note allegations if they are not corroborated by other evidence. This means they are unlikely to be investigated by other bodies and so a vicious circle of neglect of ill-treatment is created;
- f. A view that, as other bodies were responsible for investigating allegations, the NPM had no responsibility in this regard;
- g. Concern about the potential repercussions for individuals within the NPM of reporting allegations. [Paragraph 142]

Suggestions

XXIX. *Despite the good planning for its visits and recognising the presence of NPM Obs may have distorted the conduct of the visits it attended, the NPM may wish to consider how, in addition to spending longer on each visit (paragraph XXI above), it could make better use of the time it spends in places of deprivation of liberty. Arrangements should ensure the whole team spend a strictly limited amount of time in initial meetings. The plan for the visit should also always allow time at the end of the visit for all members of the team to consider and agree short initial feed-back on the main findings and recommendations (in exceptional circumstances such as that described in paragraphs 137 and 138 concerning the visit to the police station,*

consideration and feedback of initial conclusions may not be possible or appropriate at the end of the visit).

- XXX. *The leadership of the NPM may wish to consider steps that could enable members of visit teams to follow-up promptly concerns and ensure they are acted on. This would include:*
- a. *The Protector of Citizens and Head of the NPM making a clear public statement that the prevention of torture is the NPM's first priority and that visit teams have a clear responsibility to follow-up on concerns and allegations, and are given the time and encouragement to do so;*
 - b. *Ensuring the visit plan allows time for members of the NPM to follow-up concerns and cross check findings, if necessary promptly returning to institutions or following persons deprived of their liberty across institutions;*
 - c. *Reporting allegations of ill-treatment to the relevant investigatory authorities unless the NPM is satisfied they are unlikely to be true;*
 - d. *Ensuring the confidentiality of any interview with persons deprived of their liberty and that the NPM itself can work and discuss in private;*
 - e. *Any concerns about reprisals of or consequences for individual visit team members should be addressed at the most senior levels.*

Criterion 9 - Responding to the risk of immediate harm

Observations

- XXXI. The NPM did not have any formal procedures for dealing with risks of immediate harm but the NPM Obs delegation was told informal arrangements were in place to deal with such circumstances. [Paragraphs 145-149]

Suggestions

- XXXII. *It may be useful for the NPM to develop a procedure for each type of place of deprivation of liberty with the relevant authorities about how risk of immediate serious harm to persons deprived of their liberty, staff or others should be dealt with.*

Criterion 10 - Countering the risk of reprisals

Observations

- XXXIII. The NPM was aware of the risk of sanctions being taken against people who co-operated with it. There is no legal prohibition against sanctions for co-operation with the NPM but the NPM's planning for and conduct of its visits took care to avoid this risk. [Paragraphs 151-157]

Suggestions

XXXIV. *The NPM may wish to recommend to the state authorities the need for legal sanctions against people interfering with those who cooperate with the NPM*

Criterion 11 - Reports and recommendations

Observations

XXXV. The NPM Obs delegation had access to informally translated reports of the visits we accompanied. The reports were comprehensive and made good use of photographs. The reports systematically followed up previous recommendations of the NPM and referred to the CPT's findings. NPM Obs noted that the reports relied heavily on information provided by the places of deprivation of liberty themselves in response to the NPM's questionnaires. Other reports were available and had a clear structure that related findings and recommendations to the relevant standards and to previous visits (including by the CPT). Recommendations appeared to be comprehensive and relevant. The structure of the NPM's reports viewed by the NPM Obs delegation and the presentation of information in them were of high quality and are examples of good practice that should be shared. [Paragraphs 159-167]

Criterion 12 - Visits follow-up

Observations

XXXVI. The NPM systematically followed up its recommendations and engaged well with local and national authorities. At both the psychiatric hospital and prison to which NPM Obs accompanied the NPM, there was clear evidence that its previous recommendations had led to valuable improvements. [Paragraphs 168-173]

Criterion 13 - External contacts

Observations

XXXVII. The NPM had good contact with a wide range of civil society organisations. [Paragraphs 174-176]

Criterion 14 - Non-visit activities

Observations

XXXVIII. The NPM carried out a wide range of relevant non-visit activities. It had commented on draft laws, taken measures to improve understanding of the rights of migrants deprived of their liberty and co-operated with relevant international bodies and other NPMs. The NPM did not have its own 'branding' distinct from that of the Protector of Citizens. [Paragraphs 177-183]

Criterion 15 – Annual reports

Observations

XXXIX. The NPM produces an annual report each year which is translated into English and contains a full description of the NPM's activities and a summary of its main findings. The reports are published and shared with the SPT and other relevant bodies. The National Assembly had considered the NPM's 2015 report but had not done so with subsequent reports. [Paragraphs 184-188]

Criterion 16 - Self-assessment

Observations

XL. The NPM does not have a formal self-assessment process but was very open to the visits by the NPM Obs delegations. Its report structure enabled the NPM to maintain a continuous assessment of its impact. The NPM had a robust and self-critical debrief after the visits on which the NPM Obs delegation accompanied them. They recognised many of the concerns the NPM Obs delegation identified and were keen to learn and improve. [Paragraphs 189-195]

FINDINGS AND SUGGESTIONS

INTRODUCTION

NPM Observatory

1. This report sets out the main observations of the visits by NPM Observatory (NPM Obs) to the National Preventive Mechanism (NPM) of Serbia in June 2017 and June 2018.
2. The report begins by briefly explaining the role of NPM Obs and the modalities of these visits. It then sets out a short overview of the NPM of Serbia and the context within which it operates. The main body of the report sets out observations under each of the criteria used by NPM Obs. Where appropriate some matters the NPM may wish to consider as a means of strengthening its work are suggested.
3. NPM Obs is an international not-for-profit organisation registered as an association under French law.
4. NPM Obs was established in Grenoble on the 22nd June 2016, the 10th anniversary of the entry into force of the Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (OPCAT). The new association's members committed themselves to joining forces with the international community involved in preventing torture and other forms of ill-treatment.
5. NPM Obs is a new monitoring initiative that offers the national mechanisms for the prevention of torture (NPMs) the opportunity for independent observation and analysis of their capacity to effectively carry out the global task assigned under the OPCAT.
6. Based on on-site observation using criteria and indicators which have been agreed upon by stakeholders in the field of prevention of torture (Appendix A), NPM Obs aims at supporting each NPM in becoming more operational and effective, as well as strengthening the NPM's mandate, powers and means to fulfil its role and to ensure the implementation of its recommendations addressed to the national authorities.
7. Visits by NPM Obs are undertaken at the invitation of the NPM concerned.
8. Draft reports of NPM Obs delegations are subject to discussion and clarification as to factual accuracy with the NPM and to confidential discussion and agreement by the members of NPM Obs. The final version of the report is issued to the NPM on behalf of NPM Obs as a whole. NPM Obs hopes the NPM will then agree to publication of the report.
9. This was the first observation undertaken by NPM Obs and as a result the preliminary visit described below was more substantive than would normally be the case. The period between the two visits was also longer than NPM Obs would usually plan, to accommodate the availability of NPM Obs members and changes within the NPM of Serbia.

Dates of the visit and composition of the visit teams

10. The preliminary visit took place on 19 and 20 June 2017. The main visit took place between 18 to 22 June 2018.
11. The preliminary visit was undertaken by Professor Nick Hardwick and Dr Alan Mitchell. The main visit was undertaken by Professor Hardwick and Dr Pétur Hauksson.
12. On both visits NPM Obs members were supported by two interpreters engaged by NPM Obs.
13. All members of the visit team are bound by the policies of NPM Obs and the obligations on matters such as confidentiality contained within the MoU agreed with the NPM.
14. The Memoranda of Understanding setting out the terms of the visits are attached as Appendix B.

Programme

15. The NPM Obs delegations met with members of the NPM, state authorities and other stakeholders of the NPM during the preliminary visit.
16. On the main visit the NPM delegation accompanied the NPM on visits to a special psychiatric hospital in Kovin on 19 June, a penal correctional institution (prison) on 20 and 21 June and an evening visit to a police station on 20 June. The NPM Obs delegation observed the preparations for and debrief following these visits. The organisations and individuals who assisted during the delegation's visits are listed in Appendix C.
17. NPM Obs was provided with the NPM's draft reports of these visits in Serbian Cyrillic script on 12 October 2018 and was able to undertake informal translations of these reports; where relevant these are referred to below.
18. It is important to recognise that the presence of international observers on the NPM's visits had certain distorting effects. This included time kindly taken during the visits to explain the situation to the NPM Obs delegation which was not necessary for the NPM team, a significant increase in the number of those visiting and the difficulties this created in sometimes cramped environments, and some suggestion that the responses of institution staff were constrained by the presence of international observers. All observations should be interpreted in the light of this caveat.

CONTEXT

The NPM

Establishment and structure

19. The Republic of Serbia signed the OPCAT on 25 September 2003, passed the law on ratification on 1 December 2005 and became a State Party of the OPCAT on 26 September 2006¹.
20. The Protector of Citizens or Ombudsman was established under the constitution of 2006 and is accredited as a National Human Rights Institution. The Protector of Citizens was designated as the NPM of Serbia by the Law on the Ratification of the Optional Protocol, adopted on 28 July 2011.
21. The head of the NPM or NPM Coordinator was the Deputy Protector for Rights of Persons Deprived of their Liberty, Miloš Janković. He held one of four Deputy Protector roles within the Protector of Citizens office, the others being for children's rights and gender equality, the rights of persons with disabilities, and the rights of national minorities. The NPM secretariat or permanent staff team of the NPM consists of four people and administrative support. They are headed by the NPM Secretary. The Head of the NPM and the NPM secretariat together form the NPM centre.
22. The NPM of Serbia is the 'Ombudsman plus' model². The law establishing the NPM stipulated that the Protector of Citizens should carry out his NPM duties in collaboration with the Ombudsmen of the autonomous provinces (in practice only Vojvodina) and associations whose goal is the promotion and protection of human rights. A Memorandum of Cooperation was signed with the Provincial Ombudsman in December 2011. In 2011 nine NGOs were chosen to collaborate with the NPM. The process was repeated for the period February 2016 to January 2018. New agreements were entered into with four associations: the Belgrade Centre for Human Rights, the Committee of Lawyers for Human Rights, the MDRI-S Initiative for the Rights of Persons with Disabilities and the International Aid Network.
23. In advance of the NPM becoming operational, from 2010 the Protector of Citizens established a 'Preventive Mechanism' which carried out preventive visits to places of deprivation of liberty.
24. The NPM commenced its visits in February 2012.

¹ The process of establishing the NPM of Serbia, its legal basis and its methodology is described in: Janković.M (2011) *Setting-up of National Preventive Mechanism in Serbia*. Belgrade. Protector of Citizens of Republic of Serbia. [online] Available from https://npm.ils.rs/attachments/017_-%20-%20SERBIA%20NPM%20SETTING-UP.pdf

² Association for the Prevention of Torture (2006) *Guide. Establishment and Designation of National Preventive Mechanisms*, Geneva [online] Available from: https://www.apt.ch/content/files_res/NPM.Guide.pdf (Accessed 9-8-18)

25. At the time of NPM Obs' visits the NPM was based in its own offices within the main office of the Protector of Citizens at Deligradska 16, Belgrade, Republic of Serbia. The NPM has its own website:

http://npm.ils.rs/index.php?option=com_content&view=featured&Itemid=2

26. Both visits to the NPM of Serbia by NPM Obs took place at a times of change for the NPM. Until February 2017, the Protector of Citizens was Mr Saša Janković. In 2015 the OSCE and EU expressed concerns about media and political attacks on Mr Saša Janković³⁴. In February 2017 Mr Saša Janković resigned his office to stand for election as President. At that time, the then Deputy Protector for Rights of Persons Deprived of their Liberty, Miloš Janković, became the Acting Protector of Citizens and he was in that role at the time of our visit in 2017. The election of a new Protector of Citizens, Mr Zoran Pasalić, took place in July 2017; Mr Miloš Jankovic returned to his substantive role. It was reported that Mr Miloš Jankovic's term of office was due to end soon after the second NPM Obs visit.
27. The Belgrade Centre for Human Rights report on Human Rights in Serbia for 2017 reported some controversy about the election and noted that in the past the NPM had been subject to: "challenges, public criticisms, attacks and difficulties."⁵ The changes in leadership and the political environment in which the NPM conducted its work created concerns about the ability of the NPM to carry out its work independently.
28. The NPM Obs delegation met the new Protector of Citizens, Mr Zoran Pasalić, for a brief and informal conversation during its 2018 visit. He said he was positive about the work of the NPM and its staff.

Activities

29. The NPM reported in its 2016 Annual Report that 92 visits were made to institutions accommodating persons deprived of their liberty compared with 117 in the previous year. This included 'regular visits' to 33 police stations, eight facilities for the enforcement of criminal sanctions (prisons), three psychiatric institutions and with the support of UNHCR, 52 thematic visits to institutions competent to deal with asylum seekers and refugees. In addition, the NPM visited 3 social welfare institutions 'of a home type' and made four follow-up visits to police stations and administration.
30. In 2016, the NPM drafted 54 reports and issued 318 recommendations.

³ Independence of institutions must be respected, says OSCE Mission to Serbia Acting Head Uyehara', OSCE Mission to Serbia, 21 April, available at <http://www.osce.org/serbia/152396>.

⁴ European Parliament resolution of 11 March 2015 on the 2014 Progress Report on Serbia, available at para 20 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0065+0+DOC+XML+V0//EN>.

⁵ Belgrade Centre for Human Rights (2018) *Human Rights in Serbia 2017 Law, Practice and International Human Rights Standards*. [online] Available from: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2018/03/Human-rights-in-Serbia-2017.pdf> [Accessed 19 August 2018] pp.249-251

31. The NPM of Serbia has been active in co-operating with the SPT and other international human rights bodies and has played an active role in the network of South East European NPMs.

National context

Places of deprivation of liberty

32. In NPM Obs' 2017 visit the NPM provided an overview of places of deprivation of liberty in Serbia. The prison population was about 10,600. Individual prisons had populations ranging in size from 2000 to 50 people. There were three large prisons, a number of smaller establishments and two juvenile correctional institutions. There was one prison for women. A new prison opened in Belgrade in 2010. In addition, there were a range of police custody facilities under the responsibility of the Ministry of the Interior, psychiatric hospitals and social welfare institutions. There were a number of open reception centres for migrants and one closed detention facility for foreign nationals. The NPM defined facilities for migrants within its remit as those where migrants 'are' or 'might be' detained. There were military detention facilities which have not yet been visited by the NPM although consideration was now being given to doing so.

Migration

33. Since 2015 the migrant crisis has placed heavy demands on the NPM. The NPM reported that 600,000 refugees and migrants were registered in Serbia that year. In 2017 NGOs told the delegation that over one million migrants moved through Serbia in 2016 and the NPM's 2017 Annual Report records a greater emphasis of the NPM's work in this area in response to the longer periods migrants were remaining in Serbia. In 2018 migrant numbers had reportedly reduced substantially as migration routes had changed.

European Committee for the Prevention of Torture visits

34. Since the year 2000, European Committee for the Prevention of Torture (CPT) visits have taken place in 2004, November 2007, February 2011, May 2015 and June 2017. The 2015 report highlighted a significant number of allegations of ill-treatment by police officers, in prisons and in juvenile correctional facilities. The CPT reported prisons were over-crowded, understaffed and material conditions were poor. Allegations of ill treatment were also received about health and social welfare institutions.⁶ The CPT returned to Serbia for an ad hoc visit in early June 2017 shortly before NPM Obs' own visit and examined policing matters and remand facilities. The 2017 report was published in 2018 during the NPM Obs delegation's visit that year. It was highly critical of systematic ill-treatment of detainees by the police and noted the overcrowding and lack of time out of their cells for prisoners held in pre-trial detention⁷. Neither the CPT's

⁶ CPT/Inf (2016) 21. *Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 May to 5 June 2015* (2016) Strasbourg. Council of Europe. [online] Available from <https://rm.coe.int/1680697c94> [Accessed 10 July 2017] pp6-9

⁷ CPT/Inf (2018) 21. *Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31*

report of its visit in 2017 nor the government's response made any reference to the work of the NPM other than the CPT noting it had met with the head of the NPM. Nor was the NPM's potential role in preventing such ill-treatment in the future mentioned.

The Subcommittee on Prevention of Torture

35. The Subcommittee on Prevention of Torture (SPT) has not visited Serbia. In June and July 2018, the respective plenary sessions of the CPT and SPT agreed to strengthen the co-operation between them. As part of this arrangement the SPT also decided to place particular emphasis on the work of NPMs of the Council of Europe member states.

OBSERVATIONS AND SUGGESTIONS

Criterion 1 - Independence:

The functional independence of the NPM and the independence of its personnel are guaranteed

36. As noted above (paragraph 22), the NPM in Serbia is based on the 'Ombudsman plus' model and exists within the office of the Protector of Citizens (Ombudsman) working in association with the Provincial Ombudsman and associations (NGOs) concerned with the protection and promotion of the human rights of persons deprived of their liberty. The model was adopted by the Law on the Amendments to the Law on the Ratification of the Optional Protocol, of July 28, 2011 following consultation.
37. The mandate of the Protector of Citizens is set out in Article 138 of the Constitution of Serbia and the Law on the Protector of Citizens. These define the Protector of Citizens' immunities and provide safeguards against the arbitrary revocation of his mandate.
38. Initially nine associations or NGOs were selected to work with the Protector of Citizens in the NPM following a public call for applicants in December 2011 and a review of applications by a selection commission. Selection criteria included quality and quantity of activities to promote human rights, particularly for persons deprived of their liberty, relevant reports and publications produced, and qualifications and expertise of staff. The process was repeated in 2018 and four NGOs were reappointed as members of the NPM. Some difficulties with this second process are discussed below (paragraph 46).
39. The NPM appeared to have an appropriate gender balance. The delegation did not establish the extent to which minority groups were reflected amongst the different parts of the NPM.
40. The NPM has played an active, autonomous role maintaining a dialogue with the CPT and SPT and working for the development of NPMs in South East Europe.
41. Despite the legal guarantees of the NPM's independence, NPM Obs was concerned that in practice this independence needed to be strengthened. In particular, the delegation felt it would be helpful if the NPM's relationship with the Protector of Citizens more

fully complied with the advice of the SPT on these relationships. The delegation also observed that the independence and effectiveness of the NPM's visits, in particular to police stations, could be strengthened.

42. The relationship between the NPM and the Protector of Citizens is complex. Guideline 32 of the SPT's Guidelines on National Preventive Mechanisms states that:

*where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget.*⁸

In its guidance on 'Organizational issues regarding national preventive mechanisms that form part of a national human rights institution' the SPT states:

*In order to guarantee the operational autonomy of the national preventive mechanism and a "flat" relationship between the national human rights institution and the national preventive mechanism, the Subcommittee would recommend placing the mechanism as a parallel structure at the level of the head of the institution...*⁹

In 2015 the UN Committee Against Torture stated in its Concluding Observations of the Second Periodical Report on the Republic of Serbia (item 21.) that the State Party should:

*provide adequate and permanent staffing levels and material resources to ensure that the Protector of Citizens can carry out independently and effectively the national preventive mechanism mandate*¹⁰.

In its report of its 2015 visit the CPT drew attention to Guideline 32 issued by the SPT and stated:

*The CPT invites the Serbian authorities to maintain, and possibly increase, the current level of funding devoted to the NPM within the budget of the Ombudsman's Office. Further, the Committee suggests that consideration be given to setting up a separate NPM unit or department within the Ombudsman's Office.*¹¹

43. In its 2015 Annual Report (published in 2016) the NPM reported that at the end of 2015, the National Assembly of Republic of Serbia had agreed changes that made it possible

⁸ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2010) Guidelines on National Preventive Mechanisms [online] Available from: <https://www.ohchr.org/en/hrbodies/opcat/pages/opcatindex.aspx> [Accessed 16 August 2018]

⁹ Committee Against Torture (2016). *Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* [online] Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/059/73/PDF/G1605973.pdf?OpenElement> [Accessed 15 August 2018] pp. 20-22

¹⁰ CAT/C/SRB/CO/2, para. 21

¹¹ *Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 May to 5 June 2015* ibid. p.14

for the NPM to be established as a separate unit within the office of the Protector of Citizens. The NPM urged further measures to enhance its autonomy and status. Some progress was then made. In its 2016 Annual Report (published in 2017) the NPM reported increases in its budget and staff, the establishment of its own offices within those of the Protector of Citizens and that it had largely obtained control of its own budget. It noted

the NPM Secretariat does not operate under the Secretariat of the Protector of the Citizens and it is directly responsible for its work to the Protector of the Citizens, i.e., Deputy Protector of the Citizens in charge of the NPM affairs.

44. Nevertheless, the NPM continued to call for further changes and at the time of its 2017 visit the NPM Obs delegation agreed it was difficult to make a sufficiently clear distinction between the work of the NPM and that of the Protector of Citizens as a whole. There were potential conflicts between the Protector of Citizens' responsibilities towards the victims of crime and his role as an NPM. The accountability of the Protector of Citizens for the work of his office as a whole created tension with the autonomy of the NPM.
45. By the time of the NPM Obs visit in 2018 the relationship had become even more complex and this had impacted on the NPM's ability to carry out its mandate effectively and independently.
46. The NPM Obs delegation observed that the Protector of Citizens had intervened in the work of the NPM in a number of ways. There had been some disagreement about the way the second process to appoint NGOs to collaborate with the NPM had been conducted and the Protector of Citizens had required it to be re-run. This had led to a period when the NPM was without NGOs in collaboration and it was reported that thereafter some NGOs had been unwilling to participate and the number of NGOs who had been reappointed was reduced to four. Restrictions had also been placed on the NPM's ability to employ medical experts. The cumulative effect of these restrictions had been to limit the NPM's ability to undertake visits. In the period of these restrictions and delays it was reported that the NPM had only been able to make two or three visits to prisons and these were without the participation of NGOs or a doctor.
47. The NPM had also been prohibited from undertaking visits to police stations for a three-month period. All staff other than the Head of the NPM had had their security clearances withdrawn and so only he was formally able to examine documents with a security classification.
48. There may have been financial, legal or organisational reasons for these measures. Nevertheless, the fact that they were imposed on the NPM rather than a result of its own autonomous decisions meant that the cumulative effect of these restrictions had been to weaken at least the perception of the NPM's independence and the confidence of the NPM's staff to assert it.
49. The challenges to the NPM's independence were most clearly seen in the NPM's visits to police stations which are discussed below (paragraphs 132 to 145).

Matters the NPM may wish to consider

50. The NPM should request the support of the SPT, in accordance with Article 11 (b) (iv) of the OPCAT, to encourage the national authorities to implement the SPT's guidance on 'Organizational issues regarding national preventive mechanisms that form part of a national human rights institution'. In this regard, NPM Obs suggests focussing on giving financial autonomy to the NPM and creating a 'flat' rather than hierarchical relationship between the Protector of Citizens and the Head of the NPM.

Criterion 2 - Mandate and powers:

The mandate and powers of the NPM are sufficient for the performance of its preventive role

51. The powers, rights and duties of the Protector of Citizens are set out in Law on the Protector of Citizens. The National Assembly, President of the Republic, the Government, the Constitutional Court, the courts and the public prosecutors' offices are excluded from the mandate of the Protector of Citizens. The specific powers and duties of the NPM and the immunities and other privileges of those working on behalf of the NPM and safeguards for those providing information to it are not set out in legislation. The NPM's own published methodology sets out how it will address some of these issues.
52. The NPM reported that in 2017 that it had unhindered access to all places of deprivation of liberty under the direct or indirect control of the state. The mandate is interpreted broadly and includes health and social welfare settings and a wide range of immigration facilities.
53. The visits on which the NPM Obs delegation accompanied the NPM were announced to facilitate its participation. The NPM also conducts unannounced visits and some NGOs explained in 2017 that they thought a greater proportion of visits should be unannounced. In 2014 the NPM announced its intention to carry out more unannounced visits and its reports confirm the proportion of unannounced visits has increased since then.
54. The NPM may conduct interviews with persons deprived of their liberty in private.
55. The NPM usually determines its own programme of visits and sets out its own methodology and the fees payable to those working on its behalf. The NPM had received funding from UNHCR for its visits to facilities for asylum seekers and refugees and in paragraph 89 below, there is reference to the risk that this could have distorted the NPM's programme.

Matters the NPM may wish to consider

56. To ensure that the NPM's powers and duties, immunities and privileges have a solid basis, it would be desirable for them to be specifically set out in legislation. The changes in the leadership of the NPM and organisational issues referred to above illustrate the need for such a development.

Criterion 3 - Organisation and resources:

The organisation and resources of the NPM enable the effective, independent implementation of its mandate and its role is clearly distinguished from any wider body of which it is part (such as a NHRI)

57. The NPM secretariat was established as a separate unit within the office of the Protector of Citizens at the end of 2015. It is based in two offices within the building of the Protector of Citizens. The NPM reports it has use of a van and all necessary office equipment. The NPM has its own website.
58. The secretariat consists of the NPM Secretary and three staff. Two members of the secretariat are lawyers, one is a pedagogue and one is a communications/media specialist. At the time of the exploratory visit the Deputy Protector of Citizens was the Acting Protector of Citizens and dividing his time between the two roles but by the time of our second visit he had reverted to his substantive role. The NPM Obs delegation was impressed by the commitment and diligence of the secretariat and felt sympathetic to concerns that salaries of the secretariat were not consistent with their responsibilities and seniority. The NPM used 'experts' to assist with some visits. In 2017 the delegation met informally with one of the NPM's experts, a doctor of forensic medicine. In 2018 he was part of the NPM visit team accompanied by the NPM Obs delegation. He was joined by a professional colleague on the visit to the prison. Fees for experts are paid on a roughly pro rata basis on a rate equivalent to the salary of a civil servant of the highest rank and pay scales plus expenses. The NPM reported that they co-operated with academics where necessary.
59. The activities of the NPM in the province of Vojvodina were carried out in co-operation with the Provincial Ombudsman in accordance with a Memorandum of Understanding signed on 12 December 2011. The Provincial Ombudsman receives no additional funding for its NPM activities. On some occasions they had not been able to participate in visits because they did not have access to vehicles. The lack of dedicated staff and resources limits the contribution of the Provincial Ombudsman to the NPM. Two representatives of the Provincial Ombudsman were part of the visit team to the special psychiatric hospital that NPM Obs accompanied in 2018. They appeared to have an observer role rather than being active participants in the visit.
60. The NPM's activities are also carried out in conjunction with NGOs as described above (paragraph 22). NGOs are reimbursed on a pro rata basis equivalent to the average Serbian salary plus expenses. In 2017 NGOs reported that this amount was insufficient and limited their involvement in the activities of the NPM. A representative from the Belgrade Centre for Human Rights was part of the visit team to the prison and police station and played an effective role.
61. The NPMs annual budget for 2016 was €87,600 compared with €62,587 in 2015. Non-staff costs in 2017 were reported to be as follows:

Travel	€16707
Expenses	€20326

Office costs	€1219
Total	€38252

62. In meetings with the NPM in 2017 the NPM Obs delegation was told that "they started small and pretended to be bigger". The NPM stated that initially they had received good support from the OSCE but this had now ceased. All parts of the NPM who met with the NPM Obs delegation in 2017 agreed the NPM needed to be bigger and stronger. The NPM's 2016 Annual Report again stated that its resources continued to be insufficient and that the NPM had insufficient autonomy in the management of its budget, reflecting some of the difficulties described above (paragraph 46).
63. There were no indications that suggested the NPM carried out its work in a way that created a conflict of interest.
64. Given the limited resources of the secretariat it appeared to be very well organised. There was 'systematisation' of duties with a clear allocation of responsibilities and the NPM's working methods were clearly set out.
65. The delegation did not examine the secretariat's procedures for appointing and dismissing staff or experts.
66. Each of the NGOs whom the NPM Obs delegations met in 2017 and 2018 was impressive. Without exception, they clearly understood the role of the NPM and their contribution to its work. In 2017 the delegation gained the impression that there could be better co-ordination of their efforts in preparation for a visit and how their particular findings might best inform the production of the post-visit report. Co-ordination with the NGO representative who accompanied the NPM's visits in 2018 however was good. The NGOs who spoke to NPM Obs were only positive when discussing their liaison with the staff of the secretariat. The Deputy Protector of Citizens was keen for greater efforts to be made by the secretariat to engage with NGOs and the delegation supports his view.
67. Resources for training were limited but opportunities for secretariat members were created through meetings with other NPMs in the region. In 2015 members of the secretariat took part in seminars and training on asylum, migration, discrimination and international human rights law. One member of the secretariat attended a summer school for NPMs provided by Prison Reform International in 2017. No recent training in the work of the NPM had been provided for staff of the Provincial Ombudsman and NGOs.
68. The published methodology of the work of the NPM sets out principles for the conduct of the NPM's personnel based on established monitoring principles. NPM members conducted themselves professionally when accompanied on visits in 2018.
69. Job descriptions and requirements for senior staff of the NPM secretariat are published.
70. The effective delivery of the NPM's mandate as a whole depends in large part on it establishing appropriate and constructive relationships with the relevant ministries. In

2017 both the NPM centre and the representatives of the ministries told the NPM Obs delegation that good relationships existed between them. There appeared to be a good level of engagement on the NPM's recommendations. The NGOs the delegation met were less positive about their engagement with the ministries but this may have related to their non-NPM activities. At that time, the NPM Obs delegation was told that relationships with the Ministry of the Interior who were responsible for police custody were less good and they did not take up their invitation to meet with the delegation. It was apparent in the 2018 NPM Obs visit that an unsatisfactory relationship with the Ministry of the Interior contributed to the challenging nature of the NPM's visits to some police custody locations.

71. The NPM does not have arrangements to communicate urgent action requests to the relevant ministry.

Matters the NPM may wish to consider

72. It is suggested that the NPM in conjunction with the relevant bodies reviews the funding, salaries and other resources available for all parts of the NPM to ensure it is adequate to cover the costs of their activities and properly reflects their status and responsibilities.

Criterion 4 - Standards:

The standards used by the NPM to assess the treatment of persons deprived of their liberty are at a minimum consistent with the relevant universal and regional human rights rules and norms and take account of the particular circumstances of different categories of persons deprived of their liberty. These standards are published.

73. The NPM has not developed its own assessment standards but explicitly links the findings in its visit reports to relevant human rights standards and national law. The NPM's methodology states that reports will include an "indication to relevant provisions of domestic and international regulations and standards related to the perceived developments of work irregularities".
74. In its 2015 Annual Report, the NPM noted that due to the outbreak of the refugee crisis there was no complete legal framework that would be applicable to the new situation and so the NPM had to develop its own standards and ad hoc working methodology for this situation.
75. Published NPM reports indicate the NPM makes good and explicit use of most relevant international standards to assess places of deprivation of liberty. These include the European Convention on Human Rights, CPT standards and reports, the European Prison Rules, The European Code of Ethics for Prison Staff, ECtHR judgements, the Universal Declaration of Human Rights, The Convention on the Rights of the Child, UN General Assembly Resolution 217 (III), UN Principles for the protection of persons with mental illness, the Annual Report of the UN Special Rapporteur on Torture, and the Convention on the Rights of Persons with Disabilities. NPM Obs was unable to identify to what extent the standards used by the NPM included recent developments such as

the adoption of Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules') and revisions to the Standard Minimum Rules for the Treatment of Prisoners ('The Nelson Mandela Rules'). In addition, there are references to a wide variety of national legal provisions but it was not possible to say whether the national legislation referenced is consistent with regional and international standards. The NPM Obs delegation noted that in 2016 the NPM had addressed the treatment of transgender persons deprived of their liberty.

76. Although related and over-lapping, there are distinctions between the tasks of preventing torture on the one hand and preventing inhuman and degrading treatment on the other. NPM Obs acknowledges the fundamental importance of the prevention of inhuman or degrading treatment or punishment. The NPM clearly takes this specific task seriously and carries it out diligently, efficiently and commendably. However, the prevention of torture is at the core of the NPM's mandate and should be pursued accordingly. That means, inter alia, that any signs, indicative of physical ill-treatment, should be focused on immediately, with or without the knowledge of possible perpetrators (staff or other detained persons), while securely protecting the victim, if needed (the person or persons concerned may no longer be deprived of their liberty). The NPM's initial observations and information gathered on the spot should then be followed up as necessary, with for example requests for further information, medical examination and/or reports, and referrals to relevant authorities such as a prosecutor. All this should be duly mentioned in the NPM's reports and might thus have a significant preventive effect. The NPM Obs suggests that the Serbian NPM should see the above as its primary task and increasingly shift its focus towards that priority. Any obstacles hindering the NPM in carrying out the above tasks, related to the core of its mandate, the prevention of torture, should be reported and dealt with.
77. On the visits during which it accompanied the NPM in 2018, the NPM Obs delegation felt that greater attention needed to be given to the main task of preventing torture. More attention was given to material conditions, procedural irregularities with categorisation and administrative matters, which might contribute to infringement of the rights of persons deprived of liberty. Documentation relating to coercive measures, injuries and the use of restraints was thoroughly scrutinised, but these records were not systematically compared with the accounts of prisoners, video evidence or other sources. As described in paragraph 104 below, the NPM's visit teams are divided into distinct 'thematic' areas. It was noteworthy that the prevention of torture was not identified as a 'theme' for one or more members of the team to follow-up and focus on.

Matters the NPM may wish to consider

78. It is suggested that the NPM prioritises its main task of the prevention of torture for example by making it a specific 'theme' within the NPM's thematic approach (see paragraph 104) in all its visits and including it as a separate chapter in all its reports.

Criterion 5 - Places to visit – knowledge and access:

The NPM knows the location of all places of deprivation of liberty as well as the number and type of persons held and has unlimited access to every such place

79. The NPM was confident it knew the location of all places of deprivation and had access to all of them whatever their sector or type. It took a broad view of its remit. The NPM's statement on its methodology set out its entitlement to access. The NPM stated access was achieved sometimes by taking a very forceful approach and sometimes by softer persuasion..
80. As noted above, the NPM does not have its mandate set out in legislation. The NPM's good contacts with ministries, NGOs and civil society assist it in having good information about the location and condition of places of deprivation of liberty.
81. The NPM reported in its 2015 Annual Report that it was concerned about the:

attitude of the Committee for the Oversight of Security Services of the National Assembly of the Republic of Serbia that the Protector of Citizens is not authorized to act in the cases already being subject to criminal prosecution¹²

and considered that this inhibited the work of the NPM because of its association with the Protector of Citizens and so might inhibit it from responding to allegations of torture. The NPM rightly regarded this as incompatible with the crucial independence of its role.

82. The NPM has access to all places of immigration detention including airport facilities. The NPM has regularly reported on conditions of migrants detained at Nikla Tesla Belgrade airport.
83. The NPM is active in visiting health and welfare settings. NPM Obs did not establish the NPM's policy for determining which of these were within its remit.

Criterion 6 - Regularity of visits:

The NPM's visits to all types of places of deprivation of liberty are sufficiently regular to strengthen the protection of persons deprived of their liberty

84. The number of visits undertaken by the NPM each year was as follows:

2012 69

¹² National Preventive Mechanism 2015 Annual Report p.10

2013	77
2014	79
2015	117
2016	92

The number of visits undertaken in 2017 is not yet published. It was reported that for the reasons outlined above (paragraph 46), the number of visits the NPM had been able to undertake in 2018 was reduced.

85. The NPM produces a schedule of visits for each year (The Plan of Visits). The NPM's methodology describes three categories of visit: 'Regular Visits', 'Control Visits' and 'Emergency Visits'. 'Regular visits' provide a systematic examination of an institution and are planned ahead and announced. 'Control visits' assess progress since the previous visit and are planned ahead. The NPM told us these visits were now usually announced just one day before they took place. 'Emergency visits' respond to take place when the NPM is made aware of serious concerns and are not scheduled or announced.
86. The categorisation of visits was also described slightly differently as 'systematic' (which included the 'regular' and 'control visits' described in the methodology), 'thematic' visits that focussed on particular issues such as concerns identified by the CPT, and 'ad hoc' (equivalent to 'emergency visits').
87. Some visits took place in the evening. The delegation did not establish if they took place at weekends.
88. The Plan of Visits (paragraph 85) is issued by the NPM co-ordinator (Deputy Protector of Citizens)(paragraph 21) and sets out the date, length and type of visits. The Plan allows time for emergency or ad hoc visits to take place. The delegation was told that information from NGOs and complaints was used to inform the Plan of Visits.
89. In 2013 the NPM stated its priorities were juveniles, women, LGBT, and persons with disabilities deprived of the liberty. In 2014 and 2015 the NPM's focus was the prevention of abuse of asylum seekers and migrants. The focus on asylum seekers and migrants continued through 2016 into 2017. The focus on asylum seekers and refugees was in part made possible through, and reflected the availability of, funding from UNHCR to some of the NGOs collaborating with the NPM. In 2017 the NPM Obs delegation was concerned that the availability of external funding for work on migration issues and the potential new requirement to monitor forced returns might undermine the NPM's ability to determine its own priorities. By 2018 however, the decrease in migrant numbers and changes in the composition of the NGOs collaborating with the NPM had reduced the priority the NPM gave to this issue.
90. The NPM of Serbia spreads its resources relatively thinly over a large number of short visits rather than carrying out fewer visits of in depth. NPM Obs was told that visits may last one day (in a police station) to four days (in a large prison). The NPM's 2015 report of its report to migrant facilities itemises the dates of the 59 visits it made; almost all the visits lasted one day or less.

91. When the NPM Obs delegation accompanied the NPM, its visit to the special psychiatric hospital lasted one day, the visit to the penal correctional institution lasted two days and the visit to the police station took place one evening. The duration of these visits appears to be typical.
92. In 2017 NGOs stated they were concerned visits did not last long.

Matters the NPM may wish to consider

93. It is noteworthy that the NPM carries out a large number of visits with limited resources. All NPMs have to strike a balance between the frequency of their visits and the length of and personnel involved in individual visits. The NPM of Serbia carries out proportionately more but shorter visits than some other NPMs in Europe. After seven years of visiting experience, the NPM may wish to consider undertaking fewer visits of longer duration and preferably with larger teams to carry out more in-depth monitoring to ensure it obtains a deep understanding of each institution it visits. *Such an emphasis and arrangement would enable the increased emphasis on the NPM's main task, the prevention of torture, as suggested above (paragraph 78).*

Criterion 7 - Visit teams:

The composition of visit teams in terms of professional competence, gender balance and language skills is adequate to carry out their functions

94. A visiting team may consist of the NPM co-ordinator, the four permanent members of the NPM secretariat and in the past this has included up to six NGO personnel and experts depending on the type of visit and institution. It is a concern that restrictions on the NPM's use of experts may limit this in future (paragraph 46).
95. The observed visits included the five permanent NPM personnel, one NGO representative, two forensic medical doctors and at the special psychiatric hospital, one psychiatrist and the representatives of the Provincial Ombudsman. These teams appeared well-qualified for their visits but the experts who participated in the visit to the psychiatric hospital did not appear to take a proactive role in the visit and NPM Obs did not observe their expertise being fully utilised .
96. Two members of the NPM's centre are male and three are female. As noted above (paragraph 58), two members of the secretariat are lawyers, one is a pedagogue and one is a communications/media specialist. The delegation did not carry out a detailed analysis of the composition of visit teams.
97. The NPMs methodology states that the composition of the visit team is determined by the type of visit and institution and other relevant circumstances. A team leader is appointed for each visit. When forming a visit team attention is paid to the following:

Experts of profiles necessary for implementation of adequate monitoring should be included (such as psychologists, special pedagogues), with the involvement of doctors and lawyers being mandatory (depending on the type of institution and concrete circumstances, first of all the specialists in general,

*internal and forensic medicine and psychiatrists, when needed also dentists, gynaecologist...)*¹³.

98. As noted above (paragraph 67), limited training is available for members of the secretariat, very little for NGOs and none for the staff of the Provincial Ombudsman.
99. Visit reports indicate the NPM uses its own interpreters when required.
100. The delegation did not examine the composition or expertise of teams used for visiting places of deprivation of liberty holding women or juveniles.

Matters the NPM may wish to consider

101. The NPM's visit teams should continue to include relevant medical and other experts as necessary and these experts should be fully involved in the planning and conduct of the visit.
102. The NPM may wish to consider making relevant training available to all those who accompany its visits including the Provincial Ombudsman's staff, NGOs and experts and making appropriate financial arrangement to enable these personnel to attend.

Criterion 8 - Conduct of visits:

The manner in which each visit is carried out enables the NPM to accurately assess compliance with the prohibition against torture and other cruel, inhuman or degrading treatment or punishment, other relevant human rights standards, weaknesses in protection and remedies required

103. The NPM has a published visits methodology. Visits are normally split into phases. i) An interview with the management of the institution ii) A joint tour of the facility iii) The team is then divided into thematic groups who interview heads of the relevant services and examine documentation iv) Thematic groups conduct interviews with persons deprived of their liberty v) Closing interviews with the management of the institution share initial impressions.
104. The visit team is usually split into four thematic sub-groups which examine i) material conditions ii) activities iii) discipline and rights iv) health care. The NPM's 2015 Annual Report describes these thematic groups as follows:

*...the first one is in charge of the accommodation conditions (group for observation of accommodation conditions), the second one considers fulfilment of the legal protection within the institution (legal group), the third group is considering treatment of persons deprived of their liberty (treatment group), and the fourth group examines provision of health care to persons in the institution (health-care group)*¹⁴.

¹³ NPM methodology para.3.2, found at Setting-up of National Preventive Mechanism of Serbia p.74

¹⁴ National Preventive Mechanism 2015 Annual Report p.23

These phases and sub-groups may be changed or reduced according to the circumstances of individual institutions.

105. Questionnaires are used for three purposes before and during a visit. In the NPM's preparatory phase, a questionnaire is sent to all places of deprivation of liberty to obtain general information about the institution. These are intended to create a database of places of deprivation of liberty known as the 'Identity card of institutions'. The delegation did not examine this database.
106. Team members use a questionnaire to structure their work during a visit. Questionnaires are used to structure interviews with persons deprived of their liberty.
107. The methodology states that prior to a visit, members of the visit team gather information from an electronic database including the 'identity card of the institution', a pre-visit questionnaire completed by the institution, the architectural plan of the institution, access to existing reports, the Protector of Citizens' recommendations, press clippings and other data. In addition, the visit team will access a report from the complaints department of the Protector of Citizens and information from external bodies such as international bodies, other internal oversight bodies, the media and NGOs.
108. The status, role and powers of the NPM are communicated to managers in an introductory meeting (other than in an emergency or ad hoc visit where the area of concern may be visited first).
109. The NPM's methodology states it has unrestricted access to all parts of an institution. Special attention is paid to isolation premises and visits to 'special premises' may be undertaken by sub-groups responsible for specific areas.
110. Sub-groups have access to any information they require "regardless of degree of their confidentiality". The delegation observed group members having full access to medical files.
111. The NPM's methodology states that the NPM is entitled to conduct unsupervised interviews with all persons deprived of their liberty.
112. The NPM's methodology states that interviews with persons deprived of their liberty will be conducted with those who have submitted complaints or whose rights are violated, those who asked to be interviewed and others chosen at random.
113. The NPM's methodology sets out how members of visit teams should determine the modalities of their interviews with persons deprived of their liberty including the right of such persons to decline to be interviewed.
114. The delegation did not examine the methodology used for visits to specialised institutions such as juvenile detention, immigration detention and health and social welfare settings. It was impressed by the commitment and enthusiasm of the NGOs it met in 2017 who took part in such visits and the contribution they could make to visits in these settings.

115. In 2017 the delegation was not sure how members of visit teams from outside the NPM secretariat were integrated into pre-visit planning, made aware of the mandate of the NPM or made aware of the visit methodology and objectives. In 2017, NGOs said that more discussion was needed prior to and after visits. For the visits the delegation accompanied in 2018 however, the pre-visit planning meeting and pre-visit documentation were exemplary. All members of the visit team including a representative from the Provincial Ombudsman for Vojvodina and relevant NGOs were present. They were joined for this planning meeting by a representative of the Protector of Citizens who dealt with complaints. A medical expert also attended and contributed to this meeting but other medical experts who also attended the visits were not present at this planning meeting; the NPM explained their normal practice was to arrange this but on this occasion it was not possible to do so. Information including previous recommendations, complaints received by the Protector of Citizens and concerns of NGOs were shared. The main priorities and structure for the visit were agreed. Each institution was described, and maps used effectively to identify the main features. Roles were delegated to team members who had check lists or questionnaires to guide their work. The delegation observed team members using this information to thoroughly prepare for the visit.
116. Despite the good preparation, the conduct of the visits themselves sometimes appeared to lack focus. The presence of international observers made the conduct of the visits more complicated, but it appeared some of the difficulties observed also occurred on other visits.
117. The whole team spent a long time in initial meetings with heads of the visited institutions followed in the hospital and the prison by a long tour of the establishment.
118. At the hospital 40 staff initially attended the introductory meeting, apparently anticipating a lecture. Once the situation had been clarified, seven managers remained; all of these appeared to be well known to the NPM. Some time was spent explaining the purpose of the NPM's visit and the presence of observers, the publication of the report, and responses to CPT recommendations. There was discussion of some of the detailed processes of the institution, but this was not done in a systematic way. Some responses to the NPM's questions were vague and these were not probed and did not appear to be followed up later in the visit.
119. Following the introductory processes, the team split into smaller groups to examine different themes. The time the whole team spent in the initial processes was not well spent as most of the team members were already familiar with the establishments that were being visited. This limited the time available for the more detailed thematic work in which team members could speak privately to staff and detainees and make their own choices about what parts of the establishment they wished to visit.
120. With some important exceptions, there was a clear focus by all team members on the relevant standards throughout all the visits.
121. The delegation observed throughout the visits that explicit attention was not given to the main task of preventing torture. More attention was given to material conditions,

procedural irregularities with categorisation and administrative matters, which might contribute to infringement of the rights of persons deprived of liberty. As noted above (paragraph 77), the prevention of torture was not identified as a 'theme' for one or more members of the team to follow-up on and focus on. The draft reports of the visits addressed the use of coercion and sanctions by staff and reported data on deaths and injuries. The reports however appeared to rely heavily on data provided by the places of deprivation of liberty themselves which were thoroughly scrutinised but these records were not systematically compared with the accounts of prisoners, video evidence or other sources. The issue of violence or intimidation between persons deprived of their liberty themselves was not addressed either during the visits or in the reports. For instance, the team did not investigate the potential for bullying arising from any prisoner or patient hierarchy.

122. The observed interviews by team members were mostly skilful and sensitive – pushing where necessary, going softly when this was more appropriate.
123. More attention could have been given to ensuring the privacy of interviews and reassuring detainees about confidentiality and sanctions. On some occasions staff were obviously trying to overhear interviews and complaints by prisoners to the team were passed to the institution's staff without the detainee's explicit consent.
124. During the visits to the psychiatric hospital and prison the team were observant and picked up some important issues; for example, a lack of call bells in some cells, a lack of door handles effectively confining patients in the hospital to one room and one patient in a wheelchair trapped on the first floor of a block.
125. During the visit to the hospital there was little discussion about the fact that many patients were still dressed in pyjamas in the middle of the day and large dormitories were in use and this was not commented on in the immediate feedback given to the institution at the end of the visit. These issues were substantively addressed in the draft reports however.
126. In the visit to the psychiatric hospital, the medical experts on the visit team did not appear to be fully utilised to ensure sufficient focus was given to some important risks and areas of concern. For example, many patients were seen lying in bed, sleeping, at 11:30 in the morning. This observation did not appear to have been followed up or consideration given to the possibility of overmedication and/or a lack of activities. In 2007 the CPT had serious misgivings about “educational injections” in this hospital, and injections being given as “reprimand” (in a doctor’s words), “to remind the patients that what they are doing is not good”, as the CPT was told then. This was considered “unacceptable” by the CPT¹⁵. The delegation believed that, had the NPM been able to include an appropriate medical expert on this visit, these risks would have had greater focus.
127. There was a good system for the team convening to arrange to systematically cross-check what they had been told and seen.

¹⁵ <https://rm.coe.int/1680697c4c>. para 114

128. Good use was made of a camera to record the state of the buildings and key documents.
129. At the visit to the prison, the NPM visit team was well supported by two experienced forensic pathologists. However, the benefit of their presence was not fully utilised. They worked together during the whole visit, did not split up, and they had several tasks not related to their expertise, such as collecting statistics, staff working hours etc. Their time could have been better spent on issues such as following up on information that raised suspicions about possible ill-treatment.
130. Feedback to the institutions at the end of the visit lacked structure and this could seriously hinder the NPM's effectiveness. A large number of unprioritized recommendations were made on the spot. Some important issues were missed from the feedback.
131. At the time of the 2018 NPM Obs visit, the delegation had particular concerns about the NPM's visits to police stations.
132. It is noteworthy that the NPM's 2015 Annual Report stated:
- a general assessment that there is no torture in Serbia cannot be made, but what encourages is the fact that possible individual torture and other ill-treatment cases do not constitute any systemic phenomenon¹⁶.*
133. However, the CPT report of its visit from 26 May to 5 June 2015 found that in police custody *"a significant number of allegations of physical ill-treatment of criminal suspects by the police were received"*.
134. The extent of the CPT's concern was that:
- it stresses the necessity of the adoption of a multi-faceted approach to end ill-treatment by police officials consisting inter alia of delivering a strong message that ill-treatment of detained persons is illegal, unprofessional and will be subject to appropriate sanctions¹⁷.*
135. The delegation explored the apparent discrepancy between the CPT's report of its 2015 visit and the NPM's 2016 Annual Report in our meetings in 2017 with the NPM's centre and NGOs. The NPM reported that in 2015 it had conducted more than 200 confidential interviews in seven unannounced visits to prisons and police stations and had not received one allegation of torture. Their findings could not therefore substantiate the scale of abuse the CPT reported. They explained that the CPT reported allegations but the NPM only did so when such allegations were supported by medical evidence. NGOs told the delegation they did not believe there was evidence of systematic torture although there were some instances of individual abuse; they did not believe there were significant differences between the CPT and NPM reports but advised caution

¹⁶ National Preventive Mechanism 2015 Annual Report p.9

¹⁷CPT 2015 report p.6

because medical recording was very poor and referred to their concern that prison medical staff were employed by the prison rather than the Ministry of Health.

136. In the report of its 2017 ad-hoc visit which was published during our 2018 visit, the CPT again reported significant allegations of ill-treatment and stated:

The CPT's delegation received a significant number of allegations of physical ill-treatment of detained persons by police officers, notably in larger urban areas. The physical ill-treatment alleged consisted of slaps, punches, kicks and truncheon blows, strikes with various non-standard objects (such as baseball bats) and also several claims of criminal suspects being subjected to shocks from electrical discharge devices at the time of apprehension or during questioning...The Serbian authorities must recognise that the existence of ill-treatment by police officers is a fact; it is not the work of a few rogue officers but rather an accepted practice within the current police culture, notably among crime inspectors.¹⁸

137. During the 2018 NPM Obs visit the delegation accompanied the NPM on an announced visit to a police station. Despite the fact that this was an announced visit and the CPT had been highly critical, no attempt was made by the police to prepare for the visit. The NPM criticised a lack of co-operation in their draft report. The NPM team and the NPM Obs delegation were surprised that the officer who was assigned to meet the visit team in front of the station was carrying a machine gun. The officers who briefed the visit team appeared bored and contemptuous. The cells were in a very poor state. They smelt and had completely inadequate facilities, although they had allegedly been refurbished after the CPT's recommendation in 2007, to take them out of use immediately. There was no access to drinking water. A hose was located outside the cells. Its purpose was not ascertained.
138. One cell had a significant blood smear on a door frame. It was not possible to establish how old it was. This was identified by the visit team and reported to the team leader. One newly arrived detainee was in an interrogation room. He appeared to be in distress. One member of the team asked to speak to him but was instructed not to do so by the team leader until after the interrogation was over and the detainee was then moved before there was a chance to do so. The NPM did not follow up or ask for any explanation of these matters during the visit. The complaints register was unavailable. It was explained to the NPM this was because it was locked up in the evening. The lack of effective and timely follow-up hindered the NPM's ability to substantiate any concerns. The draft report of the visit however robustly criticised the lack of availability of the complaints book and contained the complaints data the NPM had obtained after the visit. The report contained a photograph of the apparent blood smear and demanded a prompt explanation.
139. At the end of the NPM Obs 2018 visit the delegation discussed with the NPM why they had not followed up some of the concerns they had identified during the visit to the

¹⁸ Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017

police station during or immediately after the visit itself. The NPM is working in very difficult circumstances and there was a danger that the changes in the leadership of the NPM had undermined the confidence of the team that they would be supported if they were critical of abuses without very strong evidence. It was unfortunate that the CPT's report of its 2017 visit missed the opportunity to signal support for the NPM.

140. In view of some of the pressures described in paragraph 143 below, it is important to recognise that the criticisms contained in the NPM's draft report of its police custody visit required courage by the NPM and a determined assertion of its independence.
141. The delegation observed a number of occasions when the NPM did not follow-up information or suspicions that might indicate individual or general ill-treatment during the visits and moved quickly to the next issue.
142. The delegation concluded that this arose from a combination of factors:
 - a. A policy of trying to visit as many establishments as possible, limiting the possibility to undertake in-depth monitoring;
 - b. A lack of training and resources;
 - c. A focus on material conditions, procedural irregularities with categorisation and administrative matters and a lack of specific focus on issues/information directly related to possible torture;
 - d. A lack of clear encouragement by the leadership of the NPM and the Protector of Citizens' office to gather information on possible examples of ill treatment by the police;
 - e. A decision not to note allegations if they are not corroborated by other evidence. This means they are unlikely to be investigated by other bodies and so a vicious circle of neglect of ill-treatment is created;
 - f. A view that as other bodies were responsible for investigating allegations, the NPM had no responsibility in this regard;
 - g. Concern about the potential repercussions for individuals within the NPM of reporting allegations.

Matters the NPM may wish to consider

143. Despite the good planning for its *visits* and recognising the presence of NPM Obs may have distorted the conduct of the visits it attended, the NPM may wish to consider how, in addition to spending longer on each visit (paragraph 93), it could make better use of the time it spends in places of deprivation of liberty. Arrangements should ensure the whole team spend a strictly limited amount of time in initial meetings. The plan for the visit should also always allow time at the end of the visit for all members of the team to consider and agree short initial feed-back on the main findings and recommendations (in exceptional circumstances such as that described in paragraphs 137 and 138 concerning the visit to the police station, consideration and feedback of initial conclusions may not be possible or appropriate at the end of the visit).

144. The leadership of the NPM may wish to consider steps that could enable members of visit teams to follow-up promptly concerns and ensure they are acted on. This would include:
- a. The Protector of Citizens and Head of the NPM making a clear public statement that the prevention of torture is the NPM's first priority and that visit teams have a clear responsibility to follow-up concerns and are given the time and encouragement to do so;
 - b. Ensuring the visit plan allows time for members of the NPM to follow-up concerns and cross check findings, if necessary returning to institutions or following persons deprived of their liberty across institutions;
 - c. Reporting allegations of ill-treatment to the relevant investigatory authorities unless the NPM is satisfied they are unlikely to be true;
 - d. Ensuring the confidentiality of any interview with persons deprived of their liberty and that the NPM itself can work and discuss in private;
 - e. Any concerns about reprisals of or consequences for individual visit team members should be addressed at the most senior levels.

Criterion 9 - Responding to the risk of immediate harm:

The NPM acts to address any risks of immediate serious harm from whatever cause identified during a visit

145. The NPM does not have any procedures or protocols about what action members of visiting teams should take if they identify a risk of immediate harm to a person deprived of their liberty during a visit. Some NGOs said such a protocol would be useful.
146. Discussion with the NPM's centre and representatives of ministries indicated that an informal understanding existed that such concerns would be raised at the appropriate level and there would be some possibility of immediate action.
147. The NPM's centre said that complaints received during a visit would be passed to the relevant department in the Protector of Citizens.
148. The delegation did not examine how the NPM dealt with child protection issues or allegations of human trafficking.
149. No action was taken to ascertain the immediate safety of the detainee heard in distress at the police station during the delegation's 2018 visit.

Matters the NPM may wish to consider

150. It may be useful for the NPM to develop a procedure for each type of place of deprivation of liberty with the relevant authorities about how risk of immediate serious harm to persons deprived of their liberty, staff or others should be dealt with.

Criterion 10 - Countering the risks of reprisals:

Processes are in place to minimise the risk of reprisals against persons deprived of their liberty as a consequence of the visit

151. The NPM's methodology states the principle of 'do not harm' and notes the importance of taking care of the safety of the sources of information.
152. NGOs explained in 2017 that in health and welfare settings they relied on staff whistle-blowers to provide them with information. These staff needed protection and in some places of deprivation of liberty, staff may be as much at risk from sanctions as persons deprived of their liberty.
153. There is no legal prohibition against sanctions for co-operation or protocol with the relevant ministries about any person co-operating with the NPM from sanctions. The NPM's methodology does not set out how the prohibition against sanctions is communicated to the place of deprivation of liberty.
154. In its 2016 Annual Report, the NPM states that it takes particular care to prevent retaliation to those who provide it with information and in the event that their identity is disclosed, pays subsequent visits to those persons to check their status.
155. The NPM Obs delegation observed that on the visits it accompanied interviews with persons deprived of their liberty were organised to maintain the confidentiality of interviewees, although as noted above in paragraph 124, the delegation observed that in practice some interviews could be overheard by staff.
156. The Law on the Protector of Citizens states that persons deprived of their liberty are entitled to submit a complaint to the Protector of Citizens in a sealed envelope which must be visibly and publicly available.
157. The delegation did not examine arrangements for protecting confidential information.

Matters the NPM may wish to consider

158. The NPM may wish to recommend to the state authorities the need for legal sanctions against people interfering with those who cooperate with the NPM

Criterion 11 - Reports and recommendations:

The NPM produces a report on each visit and makes recommendations after its visits which improve the protection of persons deprived of their liberty

159. The delegation had access to informally translated reports of the NPM's visits it observed. The reports were comprehensive and made good use of photographs. The reports systematically followed up previous recommendations of the NPM and referred to the CPT's findings. It was noted that the reports relied heavily on information provided by the places of deprivation of liberty themselves in response to the NPM's questionnaires.
160. Other NPM reports seen by NPM Obs appear to be excellent in terms of structure. These also make very good use of photographs. There is a clear format for setting out relevant

standards, previous recommendations of the NPM or the CPT, the current findings of the NPM, and the recommendations that follow on what remains to be done. This is good practice that could be shared. This structure, at least in some reports, available in English, is in fact a built-in impact assessment.

161. The NPM produces a report with recommendations on each visit (or collective visit where more than one institution is visited) which is published once the response from the authorities is received. It was reported that 1500 recommendations had been made to date. The NPM's 2016 Annual Report states 54 visit (or consolidated visit) reports were composed in 2016 containing 318 recommendations.
162. Reports of control visits focus on progress since the last visit.
163. Each annual report contains a list of all the recommendations the NPM has made in the year under review. The 2016 report lists recommendations addressed to the relevant ministries, police stations and police administrations, penal correction institutions and district prisons, social welfare homes, psychiatric institutions, and state authorities regarding the treatment of refugees/migrants. Recommendations appear to cover a comprehensive range of issues including preventing torture and ill-treatment, living conditions, procedural fairness and medical care.
164. There was some opportunity for the manager of the place of deprivation of liberty to comment on the NPM's initial findings at the end of the visit and the authorities' response was published alongside the report but there was no opportunity for them to comment on matters of factual accuracy in a draft report.
165. Recommendations were made both to the place of deprivation of liberty and, when systemic issues were identified, to the relevant ministry.
166. Representatives of ministries told the delegation that some recommendations were unrealistic in terms of the resources and time available for implementation but recognised many, such as those on restraint and isolation, could be achieved. Some felt there was insufficient emphasis on good practice – particularly within health and social care settings. They wanted recommendations to be set out in a more systematic manner.
167. There was no provision to make urgent recommendations. However, the NPM explained that reports were usually produced within one month of the visit, provided members of visit teams produced their own reports promptly. The draft reports of the visits NPM Obs observed were circulated promptly.

Criterion 12 - Visits follow-up:

The NPM follows up the implementation and impact of recommendations it and other human rights bodies have made

168. The relevant authorities respond to NPM reports and these responses are published alongside the report.

169. The NPM's control reports systematically follow-up its own recommendations and those of other bodies such as the CPT.
170. The 2015 NPM Annual Report notes that in an important signal of support for the NPM's work at that time, the National Assembly has ordered the relevant authorities to implement the NPM's recommendations without delay – but this did not always occur. The National Assembly has not repeated this in subsequent years.
171. The NPM centre said that a high proportion of its recommendation were accepted but when these were followed up by the NPM it was found that a smaller proportion had been implemented.
172. NGOs told the NPM Obs delegation - and the NPM's visit reports stated - improvements were being made in physical conditions as a result of the NPM's visits. Health and social welfare NGOs were more sceptical and felt little had changed and the authorities did not take the NPM seriously enough. They wanted a stronger response by the NPM to failings it identified. Some NGOs felt that the NPM should undertake analysis of the whole system.
173. At both the special psychiatric hospital and the penal correctional institution there was evidence that there had been important improvements as a result of the NPM's previous visits.

Criterion 13 - External contacts:

The NPM has effective and autonomous contact with other relevant national and international actors to receive information regarding possible concerns about torture, ill-treatment or other human rights abuses, co-operate in encouraging the implementation of its recommendations and promote understanding of its role

174. The NPM has contact with a wide range of actors including NGOs, state authorities, Provincial Ombudsman, experts, academics, international bodies and politicians.
175. The delegation did not investigate what processes were in place to enable people to pass information to the NPM in confidence.
176. Some of the initial NGO members of the NPM were chosen because of their specific knowledge of places of deprivation of liberty for women and of immigration detention. It was not clear whether the NGOs who were appointed in the second phase had the same spread of expertise. The delegation did not establish whether organisations of migrants themselves existed and if so, whether the NPM had contact with them. The NPM uses relevant medical experts.

Criterion 14 - Non-visit activities:

The NPM carries out other non-visit related activities which are consistent with its mandate, make effective use of its resources and strengthen the protection of persons deprived of their liberty

177. The NPM carries out a wide range of non-visit activities. The delegation did not investigate how these are planned.
178. The NPM centre said that the NPM had given an opinion on the draft law on asylum procedures, an opinion on the draft law on persons with disabilities and an opinion on freedom of movement. The delegation did not explore this further.
179. The NPM's 2016 Annual Report described a range of initiatives undertaken by the NPM with government, civil society and UN bodies to improve the treatment of refugees and asylum seekers. The NPM marked the 10th anniversary of the coming into force of the OPCAT in 2016 with a press conference with government, civil society and UN bodies.
180. The delegation did not establish if the NPM had a strategy for making its work and mandate known to the general public but noted the NPM had a wide range of contacts with NGOs and its own website with an English language section which publicises the NPM's activities.
181. The NPM does not appear to have 'branding' distinct from that of the Protector of Citizens. It does not appear to have English language Facebook and twitter accounts.
182. The NPM submitted its own observation to the CAT in 2015 and maintains a dialogue with the SPT and CPT and other international human rights bodies.
183. The NPM has been active in participating in and supporting the network of NPMs in South East Europe and in co-operating with NPMs across Europe more widely.

Criterion 15 - Annual reports:

The NPM produces an annual report covering all of its activities, which is appropriately disseminated

184. The NPM produces an annual report each year which is translated into English and is available on the NPM's website. The annual reports provide a full summary of the challenges to protection identified by the NPM, the delivery of its mandate and co-operation with other actors.
185. The delegation was told the State Party ensures the annual report is distributed without delay. In practice this is done by the NPM itself.
186. The NPM's 2015 Annual Report notes that its findings and the authorities' response are shared with the SPT, CPT and other relevant international and regional bodies. This is good practice.
187. The 2013 and 2014 reports contain a report on the deliberations of the National Assembly on the previous year's reports. The NPM's 2016 Annual Report noted with concern that the National Assembly had not considered the 2015 report by the time the 2016 report was published.

188. Annual reports summarise recommendations made during the year including those recommending changes in legislation or regulation. They do not specifically set out recommendations on draft legislation.

Criterion 16 - Self-assessment:

The NPM carries out regular and systemic self-assessments of its own effectiveness

189. The NPM was keen to receive feedback and comments on its performance from NPM Obs.
190. The NPM did not have a formal self-assessment process but in the NPM Obs delegation's discussions with them and examination of their reports the delegation found they were very willing to engage in critical reflection on their work.
191. The NPM's excellent report structure enabled it to maintain a continuous assessment of its impact.
192. The NPM centre held a very robust and self-critical debrief after the visits on which we accompanied them. They recognised many of the concerns the NPM Obs delegation had identified and provided further information regarding the context in which they were working. Their focus was on learning from this experience and using the knowledge obtained to improve the preventive effect of future visits.
193. As noted above (paragraph 135), the NPM carried out its own assessment of the allegations of torture reported in the 2015 CPT report and came to different conclusions from the CPT.
194. The NPM engaged with a wide variety of other actors. In their meetings with the NPM Obs delegation in 2017, these actors were positive about the role of the NPM but they told the delegation there were limited opportunities to engage in discussion about the work of the NPM as a whole or contribute to its continuing development.
195. In its 2016 Annual Report, the NPM set out its assessment that it required additional resources to operate more effectively. The delegation was told that in the first years of the NPM's existence it had received assistance from the OSCE but this had now ceased.

NPM OBS OBSERVATION CRITERIA

THE NPM IS EFFECTIVE IN PREVENTING TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. Independence

The functional independence of the NPM and the independence of its personnel are guaranteed.

2. Mandate and powers

The mandate and powers of the NPM are sufficient for the performance of its preventive role.

3. Organisation and resources

The organisation and resources of the NPM enable the effective, independent implementation of its mandate and its role is clearly distinguished from any wider body of which it is part (such as a NHRI).

4. Standards

The standards used by the NPM to assess the treatment of persons deprived of their liberty are at a minimum consistent with the relevant universal and regional human rights norms and take account of the particular circumstances of different categories of persons deprived of their liberty. These standards are published.

5. Places to visit – knowledge and access

The NPM knows the location of all places of deprivation of liberty as well as the number and type of persons held and has unlimited access to every such place.

6. Regularity of visits

The NPM's visits to all types of places of deprivation of liberty are sufficiently regular to strengthen the protection of persons deprived of their liberty.

7. Visit teams

The composition of visit teams in terms of professional competence, gender balance and language skills is adequate to carry out their functions.

8. Conduct of visits

The manner in which each visit is carried out enables the NPM to accurately assess compliance with the prohibition against torture and other cruel, inhuman or degrading treatment or punishment, other relevant human rights standards, weaknesses in protection and remedies required.

9. Responding to the risk of immediate harm

The NPM acts to address any risks of immediate, serious harm from whatever cause identified during a visit.

10. Countering the risks of reprisals

Processes are in place to minimize the risk of reprisals against persons deprived of their liberty as a consequence of the visit.

11. Reports and recommendations

The NPM produces a report on each visit and makes recommendations after its visits which improve the protection of persons deprived of their liberty.

12. Visits follow-up

The NPM follows up the implementation and impact of recommendations it and other human rights bodies have made

13. External contacts

The NPM has effective and autonomous contact with other relevant national and international actors to receive information regarding possible concerns about torture, ill-treatment or other human rights abuses, co-operate in encouraging the implementation of its recommendations and promote understanding of its role.

14. Non-visit activities

The NPM carries out other non-visit related activities which are consistent with its mandate, make effective use of its resources and strengthen the protection of persons deprived of their liberty.

15. Annual Report

The NPM produces an Annual Report covering all of its activities, which is appropriately disseminated.

16. Self-assessment

The NPM carries out regular and systemic self-assessments of its own effectiveness.

MEMORANDA OF UNDERSTANDING

1. Letter of Understanding circulated between the NPM of Serbia and NPM Observatory for the preliminary visit in June 2017

At the invitation received from the Serbian NPM to NPM Obs, it is agreed that the NPM Obs visit will take place under the following circumstances:

1. The NPM Obs delegation for the exploratory visit will consist of Maïté De Rue, Nick Hardwick and Alan Mitchell. They will be assisted by interpreters engaged by NPM Obs.
2. The delegation will arrive in Belgrade on 18 June and depart on 21 June 2017 and will visit the Serbian NPM on 19 and 20 June at the NPM offices.
3. The dialogue will include agreeing any additional terms and conditions for the exploratory visit, including provision of additional information and clarifications after the exploratory visit in preparation for the main visit.
4. The dialogue during the exploratory visit will include agreeing any additional terms and conditions for the main visit, which is planned to take place later in 2017.
5. The delegation for the main visit is planned to consist of Maïté De Rue, Nick Hardwick, Alan Mitchell and Patrizio Gonnella. The delegation will be assisted by interpreters.
6. In addition to finalising a memorandum / letter of understanding and preparing for the main visit, the exploratory visit will be dedicated to gathering information and understanding how the NPM is set up, its mandate, organisation and structure, including its resources (human and other) and its relations with other key actors. To that end the exploratory visit will involve meetings with persons working for and with the NPM, with state authorities and with representatives of civil society
7. It is understood that the main visit will require authorisation from the relevant Serbian authorities for the NPM Obs delegation to accompany the NPM and observe its activities in places of deprivation of liberty. The NPM undertakes to inform the competent authorities and to seek the necessary authorisation.
8. Confidentiality rules binding the NPM will be strictly respected by NPM Obs. NPM Obs and the NPM both recognise the importance of maintaining the strict confidentiality of any personal information, including in particular medical records, of persons deprived of their liberty. NPM Obs will not require personal information, including medical records, of persons deprived of their liberty as this information is not necessary for NPM Obs to undertake its work. For the avoidance of doubt, it is confirmed that NPM Obs will not seek or be given such information.
9. The NPM may require additional declarations by NPM Obs or by members of the delegation guaranteeing confidentiality, such as a Confidentiality Agreement required to be signed by each member of the delegation and any interpreter(s). NPM Obs is ready to take on such obligations. It is understood that the confidentiality does not prevent the

delegation from sharing information about its activities with other members of NPM Obs under conditions of strict confidentiality.

10. The NPM and the delegation will discuss and agree during the exploratory visit how the members of the delegation on the main visit will operate when accompanying and observing the NPM in the field so as to minimise the effect of their presence on the work of the NPM.
11. NPM Obs understands that the NPM would like some feedback from the delegation about their preliminary observations arising from the exploratory visit. NPM Obs would also welcome feedback from the NPM about its processes. The delegation and the NPM will discuss how this should be done but it is agreed that any feedback should be only for the internal use of both organisations and not disclosed further without the agreement of both organisations.
12. The NPM and the delegation will discuss and agree how feedback on the main visit will be communicated following the visit and how the confidential draft report will be discussed between them.
13. The NPM and the NPM Obs delegation will discuss how to clear the final report for publication, it being understood that the final report will not be published in whole or in part but remain confidential until the NPM and NPM Obs agree to publication and how and when this is to occur.
14. In the event that there is no agreement to publication, the NPM and the delegation will also discuss and agree whether or not NPM Obs may share the final report or information from the final report on a confidential basis with other international bodies engaging in preventive monitoring (the SPT, the CPT) as well as with other bodies designated by the NPM. It is understood that NPM Obs will share the report with such bodies only if the NPM agrees.

This letter of understanding is drafted in a spirit of cooperation, reflecting the fact that the work of NPM Obs is intended to be a constructive discussion of NPMs and their activities with a view to helping them to enhance the prevention of torture and other ill treatment of persons deprived of their liberty.

.....

Milos Jankovic
Head of the Serbian NPM
on behalf of the Serbian NPM

dated

.....

Maïté De Rue
for the entire NPM Obs delegation
on behalf of NPM Obs

dated

2. Memorandum Of Understanding Agreed Between the NPM of Serbia and NPM Observatory for the Second Visit In June 2018

1. Following its Exploratory Visit in June 2017, NPM Observatory (NPM Obs) will undertake its main visit to the NPM of Serbia in June 2018 at the invitation of the NPM of Serbia.
2. The purpose of the two visits is to assist and support the NPM of Serbia by providing constructive external feedback on its activities.
3. The visit will take place between 18 and 22 June 2018.
4. The visit team will consist of Professor Nick Hardwick (Head of Delegation) and Dr Pétur Hauksson. They will be assisted by interpreters engaged by NPM Obs.
5. The NPM of Serbia will inform the relevant authorities of the visit by NPM Obs and agree with them that the NPM Obs visit team and their interpreters can accompany and observe the NPM of Serbia in its visits to places of deprivation of liberty and all meetings associated with such visits.
6. NPM Obs will observe the same rules of confidentiality to which the NPM of Serbia is bound.
7. There will be no obstacle to the NPM Obs visit team communicating with civil society representatives it meets during its visit or personnel of the NPM of Serbia.
8. At the conclusion of their visit, the NPM Obs visit team will provide preliminary verbal feedback to the NPM of Serbia concerning its main observations. This feedback will be subject to the conclusions of the final report.
9. NPM Obs will provide a draft report to the NPM of Serbia within three months of the end of the visit. This will provide the NPM of Serbia with an opportunity to raise matters of factual accuracy and the NPM of Serbia will do this within one month of receiving the draft. NPM Obs will then consider the points made by the NPM of Serbia, amend the draft report as appropriate and then submit a final report to the NPM of Serbia.
10. The NPM of Serbia may then add any comments they wish to the report and it is hoped that the NPM of Serbia will then publish the report. Publication is entirely a matter for decision by the NPM of Serbia. NPM Obs will ensure any drafts and the final version of the report are kept confidential until and unless such publication takes place.

.....
For the NPM of Serbia
Date:.....

.....
For NPM Observatory
Date.....

LIST OF ORGANISATIONS AND INDIVIDUALS MET

We are grateful to the following organisations and individuals we met or visited during our visits in 2017 and 2018

Prof. Dr Đorđe Alempijević,
Marko Anojčić, NPM Secretariat
Milan Antonijević, Director, YUCOM Lawyers Committee For Human Rights
Dušan Aralica, UNHCR Representation in Serbia
Rastko Brajković, Danish Refugee Council
Svetlana Džukić, Administration for the Enforcement of Penal Sanctions
Dr Katarina Golubović, YUCOM Lawyers Committee For Human Rights
Vladica Ilić, Belgrade Center for Human Rights
Biljana Janjić, Mental Disability Rights Initiative MDRI – S
Miloš Janković, The Deputy Protector of Citizens for the Republic of Serbia
Miroslava Jelačić, Group 484
Jelena Jelić, NPM Secretariat
Nebojša Jokić, Ministry of Health
Prof. Dr Vladimir Jović
Nikola Kovačević, Belgrade Centre for Human Rights
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