CENTRE FOR HUMAN RIGHTS - NIS

PC ``Dušanov bazar``,kupola, lok.202, ul. Dušanova 54, 18000 Niš, Republika Srbija
E-mail: ni_cent@eunet.rs
www.chr-nis.org.rs

UN Human Rights Committee/ 119th session/ Third periodic report of Serbia/ Alternative report prepared by serbian NGO

CHR-Nis contribution:

This report contains information related to:

List of issues in relation to the third periodic report of Serbia* // Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the right to an effective remedy (arts. 2, 6 and 7)// Par 11 (b,c), Par 12

Par. 11. .....(b) public prosecutors have a legal obligation to carry out prompt, effective, independent and impartial investigations into all allegations of torture and ill-treatment wherever there is reasonable ground to believe that an act of torture or ill-treatment has been committed; and (c) any rehabilitation programme for victims of torture and ill-treatment has been instituted.
Par. 12. Please respond to concerns that the prosecution rate for torture and ill-treatment remains low, that convicted perpetrators receive lenient penalties, and that victims' access to reparation is often hindered by the high standard of proof of damage or harm set by courts and the application of statutes of limitation to their claims for reparation. Please provide updated information on the number of reported cases of torture and ill-treatment, the investigations and prosecutions initiated, actual criminal convictions, sentences imposed, including disciplinary sanctions, and reparation granted to victims.

There is a legal obligation for public prosecutors, as described under ``b``, but there are some deficiencies in implementation of related provisions of Criminal Procedure Code and consequently, the results are not encouraging. This statement will be illustrated by example and further elaborated.

I/ EXAMPLE:

Criminal charge submitted to District Public Prosecutors Office in Nis by Prison in Nis related to case of torture that allegedly happened in that institution.

A/ Description of the alleged torture case: On November 19th 2014 in the premises of the prison ambulance 5 prison guards used coercive measures on detainee D.D. related to self-harm. Case was mentioned in the CPT report from June 2016 para. 47 and 49.

B/ Criminal Charge submitted to District Public Prosecutors Office: Criminal charge was submitted on December 26th 2014; criminal charge also contained: a) Disciplinary cases files (conducted by the Prison in Nis against 5 prison guards) and b) video recording of the event

C/ Investigative measures taken by the prosecutor:

1. Request to Police station in Nis to gather information from the alleged perpetrators;

1.1. Results from Police station in Nis: (a) official report related to information gathering from the alleged perpetrators (3,5 months after the request although the deadline in the law is 1 month); (b) official report on the statement of the alleged victim of torture (4,5 months after the incident)

2. Request to Prison in Nis to submit a report on the status of the disciplinary proceedings against 5 prison guards (whether they are completed or not).

D/ Investigative measures not taken by the prosecutor: (1) Video recording of the event was not reviewed and analyzed (to show whether the use of force was excessive or not); In case that prosecutor does not have adequate competences to make an evaluation, in this case it seems that he does not, he can ask for an expert opinion: (2) Prosecutor didn't interview the alleged victim (first step) nor with the alleged perpetrators (second step, based on the information received from the victim); (3) Prosecutor did not ask for medical record of the victim. Medical record must contain description of all injuries found after every use of force and it is solid base for determining whether the use of force was excessive, what instruments were used, position of the body at the time of infliction of injuries, whether there was a resistance on the side of the victim or not, etc…); (4) Prosecutor did not ask for psychiatric report on the victim. Having in mind that the use of force was caused by the fact that detainee tried to self-harm, according to protocol he was supposed to be examined by the psychiatrist immediately after the incident. Report should have contained evaluation of physical condition of the detainee and suggestion for his treatment. (5) No witnesses were found.

E/ Other deficiencies: (1) Police officers that conducted interview with alleged victim were most probably police officers detached to Prison in Nis (their working place in Prison in Nis), without the presence of his defender. Even if the interview was conducted in professional manner it could be seen as a pressure on victim; (2) District Public Prosecutor Office made a serious omission not ordering for medical expertise of the inflicted injures immediately after the criminal chare was submitted. With this, District Public Prosecutor Office directly jeopardized the successful course of investigation.

F/ Decision of the District Public Prosecutor and justification

" … we inform you that on the June 8th this Prosecution Office found that there are no conditions for initiation of criminal investigation related to events described in the criminal charge submitted by the Prison in Nis … because there is no reasonable doubt anyone committed a criminal offence that must be investigated ex officio.

After investigation and information gathering from the D.D. as well as from civil servants, it was determined, that in a concrete case the use of force was not aimed at torturing detainee but to prevent him from self-inflict and cause serious harm to himself. Related to the question of whether the use of force was excessive, Prison in Nis have found 5 civil servants (prison guards) guilty in the course of conducted disciplinary proceedings and disciplinary sanctions were imposed. We consider that disciplinary procedure conducted against 5 civil servants exhausted the question of their further responsibility. In the actions of the civil servants there are no elements of criminal offences that should be investigated ex officio, therefore, it is decided that there is no place for further prosecution.

The decision was based, among other facts, on the statement of D.D. that prison guards did not beat him but they only tried to prevent him from inflicting injuries to himself."

(Quote from the reply of the District Public Prosecutor Office to CHR Nis)

G/ Disciplinary sanctions imposed by the Prison in Nis to perpetrators:

" … In the course of the proceedings in the first instance fines were imposed to perpetrators. They have filed complaints against the decision of the Governor and in the second instance it was decided that those complaints should be dismissed so the first instance decision was confirmed…

Imposed fines are following: two prison guards will have 20 % salary reduction in the course of 6 months, three prison guards will have 30 % salary reduction in the course of 6 months …"

H/ Legality of the decision of the District Public Prosecutor Office: District Public Prosecutor Office did not break the law with this decision.

II/ ELABORATION:

``For several years CHR- Nis monitors the work of Prosecution offices related to cases of potential torture. During this process, some deficiencies on the side of prosecution offices in processing of criminal charges submitted by alleged victims have been noticed. These deficiencies were regularly presented to the expert and general public with the purpose to draw attention to problems identified, and also, in order to overcome them. In most of the cases observed deficiencies were related to dismissal of criminal charges without thorough investigation and without adequate reasoning based on the established facts. This practice is very dangerous because it leaves an impression on solidarity of prosecutors and police officers and prison administration staff who are in the most cases referred to as perpetrators. Also this contributes to creation of culture of impunity. These findings are entirely consistent with the findings reached by the European Court of Human Rights during the consideration of cases against the Republic of Serbia relating to alleged violations of Articles 2 and 3 of the European Convention on Human Rights.

For this reason CHR- Nis has conducted a detailed analysis of the judgment of the European Court against Serbia, in which a violation of article 3 of the European Convention - prohibition of torture has been determined (Case of Habima and others v. Serbia / Application No .: 19072/08, Case of Lakatoš and others v. Serbia / Application No: 3363/08; Case of Hajnal v. Serbia / Application No: 36937/06, Case of Stanimirovic v. Serbia / Application No: 26088/06, Case of Milanovic v. Serbia / Application No: 44614/07) and Article 2 - right to life (Case of Petrovic v. Serbia / Application No: 40485/08, Case of Mladenovic v. Serbia / Application No: 1099/08). **All judgements were rendered due to the absence of an effective investigation (the procedural aspect of article 3) and none due to defects in the legislative framework.** These judgments constitute 5% of the total number of judgments against Serbia (113). The European Court, in these judgements, on several occasions drew attention to the fact that the investigations of the allegations in the criminal charges conducted by the prosecution must meet certain standards to which the court has come through its rich jurisprudence.

CHR Nis have, in late 2014, based on the examination of domestic practice, designed a solution, to the problem of lack of effective prosecutorial investigations related to potential cases of torture. Later, we found that this problem has also been recorded by the CPT in its latest report on the visit to Serbia carried out in 2015, publicly available since June 2016.

The project aiming to contribute to the effective solution of the above mentioned problem was developed in cooperation with representatives of Republican Prosecutors Office in May 2015. Ministry of Justice recognised its quality and decided to officially support the project proposal/solution/ with a recommendation letter signed by the Assistant Minister of Justice in charge of European integration and international projects.

From May 2015 project proposal was submitted to all donors in Serbia (UN, as well), involved in realisation of activities related to chapter 23 with substantive reasoning that includes references to domestic practice, ECtHR judgments against Serbia as well as CPT 2016 report (par 19 and 21). It should be added that the fulfilment of the CPT recommendations is a responsibility of the Republic of Serbia as state party to the CPT.

One of the PP`s results is a procedure that contains all relevant steps that should be taken by a prosecutor in each case so that he/she can gather all relevant information necessary for the well-founded and reasoned decision, on the grounds for criminal charge for torture. Application of this procedure will provide the

respect of relevant international standards related to procedural rights of victims and alleged perpetrators. We consider that lack of such clear procedure will continue to be a source of human right violations on a large scale although the legislative framework seems to be in order. Clear and transparent procedures will only contribute to better implementation of the legislation and consequently the rule of law.

We have to underline that this is a rare situation in which institutions of the Republic of Serbia are actually interested and open for cooperation in order to solve the existing problem but unfortunately the project is still pending because we were not able to convince donor community in Serbia to recognise this opportunity and provide adequate funding. Consequently, the problem of impunity related to cases of alleged torture in Serbia still exists due to a lack of knowledge or inadequate interest of donors.

No rehabilitation program for victims of torture and ill-treatment has been instituted.

(Lidija Vuckovic, Aleksandar Stojanovic/ February 2017)