



# Assemblée générale

Distr. générale  
25 janvier 2019  
Français  
Original : anglais

---

## Conseil des droits de l'homme

### Quarantième session

25 février-22 mars 2019

Point 3 de l'ordre du jour

**Promotion et protection de tous les droits de l'homme,  
civils, politiques, économiques, sociaux et culturels,  
y compris le droit au développement**

## Visite en Serbie et au Kosovo\*

### Rapport établi par le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants\*\*.

#### Résumé

Le Rapporteur spécial s'est rendu en Serbie et au Kosovo du 13 au 24 novembre 2017 afin d'évaluer la situation générale, les faits nouveaux et les difficultés concernant la torture et autres peines ou traitements cruels, inhumains ou dégradants.

\* Toutes les références au Kosovo figurant dans le présent rapport doivent être interprétées comme conformes à la résolution 1244 (1999) du Conseil de sécurité de l'ONU.

\*\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, annexé au résumé, est distribué dans la langue de l'original seulement.

\*\*\* Le présent document est soumis après la date prévue pour que l'information la plus récente puisse y figurer.



**Annexe**

[Anglais seulement]

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his visit to Serbia and Kosovo****Contents**

	<i>Page</i>
I. Introduction .....	3
II. Serbia .....	3
A. Legal framework.....	3
B. Allegations of torture and ill-treatment.....	5
C. Lack of genuine investigations .....	6
D. Conditions of detention.....	6
E. Excessive length of pretrial detention .....	7
F. Institutions for persons with psychosocial disabilities .....	7
G. Refugees and migrants.....	8
III. Kosovo .....	10
A. Legal framework.....	10
B. Allegations of torture and ill-treatment.....	11
C. Lack of genuine investigations .....	12
D. Excessive length of pretrial detention .....	12
E. Conditions of detention.....	13
F. Institutions for persons with psychosocial disabilities .....	14
G. Refugees and migrants.....	14
IV. Conclusions .....	15
A. Recommendations to the Government of Serbia .....	16
B. Recommendations to the authorities in Kosovo .....	18

## I. Introduction

1. From 13 to 24 November 2017, the Special Rapporteur visited Serbia and Kosovo to assess the prevailing situation, developments and challenges concerning torture and other cruel, inhuman or degrading treatment or punishment.
2. The Special Rapporteur would like to express his sincere appreciation to the authorities in Belgrade and Pristina for the excellent cooperation he enjoyed throughout the mission. The Special Rapporteur would also like to thank the office of the Resident Coordinator in Serbia and the United Nations Interim Administration Mission in Kosovo (UNMIK) for supporting his team before and during the visit. The discussions he held with officials in Belgrade and Pristina were open and constructive.
3. In Belgrade, the Special Rapporteur had the opportunity to exchange views with the Ministers of Justice and of Labour, Employment, Veteran and Social Affairs, with the Assistant Ministers of Foreign Affairs and of Health, with the Director of Police within the Ministry of Interior, the Director of the Office for Human and Minority Rights, the Deputy Director of the Office for Kosovo and Metohija, the Commissioner for Refugees and Migrants, the Presidents of the Constitutional Court and the Court of Cassation, as well as with the Deputy Ombudsman and the head of the National Preventive Mechanism. The Special Rapporteur also had the opportunity to meet with civil society representatives, including human rights organizations, lawyers and medical doctors.
4. In Pristina, the Special Rapporteur had open and constructive discussions with the Special Representative of the Secretary-General and representatives of the justice and human rights sections of UNMIK. He also had productive exchanges with the Prime Minister and his Office of Good Governance, with the Kosovo Correction Service and the Inspectorate of the Ministry of Justice, with the Kosovo Police, the Inspectorate of the Ministry of Internal Affairs, the Head of the Prison Health Department at the Ministry of Health, the Head of the Forensic Psychiatric Institute, the Ombudsperson, the Director of the National Preventive Mechanism Unit, and with representatives of the Council of Europe and of civil society organizations active in Kosovo.
5. Throughout the visit to Serbia and Kosovo, the Special Rapporteur and his team enjoyed unrestricted access to all places where people are deprived of their liberty in full accordance with the terms of reference of fact-finding visits of the special procedures.

## II. Serbia

6. In the course of his visit to Serbia, the Special Rapporteur and his team visited the holding premises of the border police at Belgrade International Airport Nikola Tesla, including the transit zone; the police stations in New Belgrade and the urban municipality of Zemun, and those in the city centres of Belgrade and Niš; the transit centres for migrants and refugees in Obrenovac, Adaševci and Preševo; the correctional institutions of Sremska Mitrovica and Niš; Belgrade district prison and the special prison hospital in Belgrade; the centre for children and youths with development disabilities in Veternik and the social care home Otthon in Stara Moravica.
7. Throughout the Special Rapporteur's visit, he was able to meet with representatives of the respective institutions, including management, security and medical staff, and to interview inmates of his choosing in private, including women, men and juveniles, in full compliance with the terms of reference of his mandate.

### A. Legal framework

#### 1. International and regional level

8. Serbia is party to all the international human rights treaties relevant to the prohibition and prevention of torture and other ill-treatment, including the Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (12 March 2001), the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (26 September 2006) and the International Covenant on Civil and Political Rights (12 March 2001). Serbia accepts the inquiry procedure and the individual complaints procedure under the Convention against Torture.

9. At the regional level, Serbia is party to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (3 March 2004) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and receives regular visits from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

## **2. National level**

### *Criminalization of torture and ill-treatment*

10. Articles 25 and 28 of the Serbian Constitution, articles 136 and 137 of the 2005 Criminal Code and articles 9 and 16 of the 2013 Criminal Procedure Code provide legal standards for the prevention and investigation of torture and other forms of ill-treatment and for the exclusion of evidence extracted under torture.

11. The Special Rapporteur noted with concern, however, that articles 136 and 137 of the Criminal Code still do not expressly criminalize acts of torture and other cruel, inhuman or degrading treatment or punishment perpetrated at the instigation, or with the consent or acquiescence of a public official or other person acting in an official capacity. The Special Rapporteur also noted with concern that the upper limits of the penalties provided for in the Criminal Code are not commensurate with the potential gravity of the crime of torture and other cruel, inhuman or degrading treatment or punishment. Criminal accountability for acts of torture and other ill-treatment is further restricted by the currently applicable statute of limitations.

12. In order to ensure full compliance with international standards on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur strongly recommends that the responsible authorities take urgent action: (a) to amend the Criminal Code so as to penalize the full spectrum of acts covered by articles 1 and 16 of the Convention against Torture, (b) to significantly increase the maximum penalties for such offences and (c) to remove all statutes of limitations for such offences.

### *Fundamental safeguards*

13. Sections 291, 294 and 69 of the Criminal Procedure Code provide sufficient safeguards against arbitrary arrest and detention, which the Special Rapporteur found to be generally well observed.

14. Formally, the right to have access to a lawyer is guaranteed from the arrest to the conviction or acquittal of any individual. However, the Special Rapporteur and his team have received persistent allegations from a number of individuals claiming to have been tried and sentenced without any assistance from a lawyer, despite their request for ex officio counsel, and from several other individuals claiming that the ex officio counsel provided to them had insufficient expertise and motivation to ensure an effective legal representation. The Special Rapporteur also received several allegations that, after sentencing, convicts were presented with invoices not only for the court fees, but also for the services of their ex officio defence counsel.

15. While medical examinations seem to be routinely carried out at the outset of custody, the forensic expert accompanying the mission was able to confirm that the medical doctors performing such examinations generally had not received specialized training and did not have sufficient expertise in the investigation and documentation of physical and psychological signs of torture and other ill-treatment and in the interpretation of the resulting injuries.

16. As a consequence, routine medical examinations do not meet the requirements of adequate and reliable forensic examinations and the resulting medical reports fall short of internationally recognized standards as reflected in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

17. In order to address this shortcoming, systematic training programmes on the Istanbul Protocol should be implemented for all health professionals who may be called to examine persons deprived of their liberty, as well as lawyers, prosecutors and judges who may be involved in relevant judicial cases, so as to strengthen their understanding of the potential and limitations of medical examinations in the identification and documentation of torture and other forms of ill-treatment.

## **B. Allegations of torture and ill-treatment**

18. The Special Rapporteur welcomes the commitment shown by all officials of the judicial and executive branches of the State to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

19. The Special Rapporteur is also pleased to report that, as far as penitentiaries and remand prisons under the authority of the Ministry of Justice are concerned, he did not receive any complaints of ill-treatment except for a few isolated allegations of excessive use of force in disciplinary situations.

20. The Special Rapporteur notes with grave concern, however, that he received numerous and consistent allegations of torture and ill-treatment at the hands of the police, most notably as a means of coercing confessions out of individuals during interrogation in police custody. Detainees reported being slapped and beaten with fists and truncheons, kicked and threatened with firearms.

21. In the same context, the Special Rapporteur's team also received several allegations of detainees having been forced to sign confessions which they had been unable to read, sometimes not only for the crime they had been arrested for, but for several additional offences that had remained unresolved, but to which they reportedly had no connection whatsoever. Based on the confessions, they alleged they had been offered plea bargains which would allow them to avoid deprivation of liberty through the confirmation of their confession and payment of a monetary fine.

22. According to the allegations received, when detainees reported such ill-treatment and the resulting injuries to a judge or prosecutor, the police would generally argue that they had acted in self-defence and be given the benefit of the doubt without any forensic examination, thus leaving victims of abuse without effective remedy.

23. Based on interviews conducted with health professionals at penitentiaries and remand prisons, and based on his own analysis of individual medical records, the forensic expert accompanying the mission of the Special Rapporteur was able to confirm trauma injuries consistent with the allegations received that were unlikely to have occurred in situations of self-defence. Having collected and evaluated these elements to the best of his ability and judgment, the Special Rapporteur must therefore conclude that there are credible indications of frequent torture and other cruel, inhuman or degrading treatment or punishment occurring in police custody in Serbia, in conjunction with the absence of effective independent oversight and with insufficient expertise on the part of medical personnel in the investigation, interpretation and documentation of the signs of torture and ill-treatment.

24. In order to correct this alarming situation and prevent impunity for any and all forms of ill-treatment on the part of the police, the Special Rapporteur urges the Serbian authorities to ensure that there are fully independent, expedient and effective complaints, oversight and investigative mechanisms, and that systematic medical examinations by independent medical personnel trained in the effective investigation, interpretation and documentation of the signs of torture and ill-treatment are assured.

### **C. Lack of genuine investigations**

25. Procedural safeguards are in place, which allow individuals to file complaints directly regarding alleged human rights violations, including torture and other forms of ill-treatment, with the administrative or judicial authorities responsible for their detention and, as a subsidiary remedy, to the Constitutional Court.

26. In particular, the law on the execution of penal sanctions provides for internal control by the respective departments of the Ministry of Justice. Similarly, the 2005 police act established an internal control section for the police, with operative units in all municipalities, while the current functions of the internal control section of the Ministry of the Interior enable senior officers from the same organizational unit to investigate subordinate officers accused of acts of ill-treatment.

27. While the Special Rapporteur strongly welcomes the measures mentioned above, he remains concerned at the lack of independence of such oversight bodies, which does not allow for a truly reliable and impartial oversight and control over alleged malpractice of the police and correctional authorities. His concern is further compounded by the low number of reported and adjudicated complaints regarding acts of torture and other ill-treatment and the disproportionately low ratio of convictions as compared to acquittals and case dismissals. That seems to reflect a lack of trust of the general population in the willingness of the authorities to ensure accountability for acts of torture and ill-treatment.

28. Measures should be urgently taken to curb the culture of impunity still prevailing for torture and ill-treatment. In particular, the Special Rapporteur is of the view that the authorities should ensure that all investigations into acts of torture and ill-treatment by the police are conducted by an independent body that is neither connected to, nor under the authority of the police.

### **D. Conditions of detention**

29. The Special Rapporteur notes that in the past, Serbia has repeatedly been criticized by international mechanisms for poor conditions of detention and overcrowding. During the Special Rapporteur's visit, it became clear that, in the course of the past few years, significant and meaningful steps have been taken to renovate and increase the capacity of the existing detention infrastructure and to build new detention facilities.

30. The Special Rapporteur was able to ascertain that large parts of the correctional centres in Niš and Sremska Mitrovica and of the central prison in Belgrade had been completely renovated and now fully met international standards, while further large-scale renovation and construction works were visibly in progress. Overcrowding remains a major problem in Sremska Mitrovica, however, with an occupancy rate of up to 150 per cent of the actual capacity, most notably in the "reception section" where convicts are initially accommodated before being assigned to a cell. There, inmates were found to suffer from unacceptable conditions, including overpopulation, problems of lice and bedbugs, dust and respiratory problems. The Special Rapporteur wishes to stress that urgent renovation is also needed in pavilion 4 of the Sremska Mitrovica correctional facility, which is gravely outdated and clearly falls short of international standards. Sanitary and hygienic conditions observed in the facilities were found to be generally satisfying, but also affected by overcrowding.

31. The Special Rapporteur therefore very much welcomes the measures taken by the relevant Serbian authorities to reduce overcrowding by promoting alternative, non-custodial measures and to facilitate conditional release in line with the "Strategy for the development of the penal sanctions enforcement system in the Republic of Serbia until 2020" and the action plan for its implementation. Those tools being in place, the Special Rapporteur urgently calls on the judicial institutions of Serbia to make maximum use of them in order to alleviate the broad spectrum of the negative consequences of overcrowding and unnecessary incarceration.

32. The Special Rapporteur further found that although access to basic health care and dental and psychiatric support was guaranteed in principle, there was still a large margin for improvement, and further efforts were required. In particular, the large facilities visited by the Special Rapporteur had an insufficient number of health professionals compared to the number of detainees they were required to care for. Additionally, there did not seem to be special programmes for detainees affected with long-term illnesses, including cancer and HIV.

33. While the holding cells in the police stations visited generally offered satisfactory conditions for short-term detention up to 48 hours, the cells in the basement of the New Belgrade police station were found to be in very poor condition, without adequate access to natural light and ventilation, and with deplorable sanitary and hygienic conditions. It is the Special Rapporteur's considered opinion that the detention of human beings in these holding cells amounts to cruel, inhuman or degrading treatment or punishment and must be immediately discontinued.

34. Overall, although the physical conditions of detention are not yet satisfactory in all of the visited institutions, the Special Rapporteur would like to expressly commend the authorities for their genuine, sustained and successful efforts towards significantly improving the conditions of detention throughout Serbia and urge them to continue their efforts with the same determination and commitment.

## **E. Excessive length of pretrial detention**

35. During his visit, the Special Rapporteur received numerous and consistent complaints from detainees about the perceived excessive length of their pretrial detention and the prolonged absence of any meaningful investigative or judicial action taken on the part of the prosecuting or adjudicating authorities for periods ranging from several months to several years, even in cases where the detainee claimed to have confessed and shown full cooperation.

36. The Special Rapporteur also received numerous complaints from convicts who alleged that they had not been considered for conditional release, despite having served two thirds of their sentence with good conduct. The consistency of the individual allegations themselves and with reports from civil society suggests a pattern of inefficiency in prosecutorial and judicial practice throughout Serbia which, in cases exceeding the margins of reasonableness, may well result in arbitrary detention and even amount to cruel, inhuman or degrading treatment.

37. While fully recognizing that deprivation of liberty in accordance with international standards remains a necessary and legitimate investigative measure and punitive sanction in any State governed by the rule of law, the Special Rapporteur is of the view that the prosecuting and judicial authorities of Serbia should take all necessary and appropriate measures to reform their practices, with a view to avoiding any unnecessary, excessive or otherwise arbitrary deprivation of liberty.

## **F. Institutions for persons with psychosocial disabilities**

38. The Special Rapporteur visited two social care institutions for persons with psychosocial disabilities, the Otthon centre in Stara Moravica and the Veternik centre. In both institutions, the material conditions of accommodation and care seemed to be modest but generally acceptable. However, both institutions suffered from serious understaffing, thus not allowing for the continued, individual attention that would be required for the development of residents' personal capacities.

39. The Special Rapporteur notes with serious concern that residents are not separated according to their age, sex and disability, which raises concerns regarding their possible exposure to violence and sexual abuse.

40. In both centres, babies with disabilities, as well as children and adults with very limited mobility spent most of the time lying in cribs or metal beds with little or no human

contact. Due to the limited human resources, caregivers limited their interactions to feeding, changing and – on a weekly basis – showering the residents.

41. The Special Rapporteur observed a lack of oversight and enforceable regulations on the use of physical restraints in the centres. He is concerned that restraints might be used unnecessarily or disproportionately, particularly in understaffed institutions or in cases of self-harm or dangerous behaviour. The Special Rapporteur would like to recall that the unjustified use of restraints may constitute inhumane and degrading treatment, and that their prolonged use can lead to serious muscle injuries, organ failure and trauma.

42. Regarding the sexual and reproductive rights of the residents, the Special Rapporteur notes with concern the forced prescription of contraceptives to all female residents. This practice appears to be generalized and applied automatically and for a prolonged period of time. While such contraception may aim to prevent unwanted pregnancies, while allowing residents to engage in sexual relations, any such measure should always be based on an individual assessment involving, to the maximum extent possible, the resident concerned herself.

43. The Special Rapporteur is also concerned that the decision of the responsible authorities to institutionalize persons with psychosocial disabilities appears to be taken based exclusively on a medical report by the treating psychiatrist, and generally without any individual encounter with the person concerned. Reportedly, many of the centres for social work that have placed individuals in social care institutions, fail to visit the concerned residents regularly in order to review or reconsider the continued necessity of their institutionalization. As most residents are completely stripped of their legal capacity, their subsequent institutionalization with the agreement of their legal guardian is automatically considered to be “voluntary” and there seems to be no effective legal remedy against such a decision.

44. As a result, residents generally remain institutionalized for the rest of their life without any serious review, in clear contradiction of international standards on the rights of persons with disabilities. Furthermore, the Special Rapporteur is concerned that many of the residents would not need to be institutionalized if alternative, community-based structures and services were available.

45. The Special Rapporteur was able to ascertain that many individuals, in particular children, were separated from their parents and family and placed in institutions simply because of a lack of community-based support and services for families wanting to keep their children born with disabilities with them.

46. The Special Rapporteur welcomes the fact that Serbian law calls for people with disabilities to have an opportunity to live in the community, but is concerned that the creation of community support systems still lacks the necessary funding and expertise to implement such programmes.

## **G. Refugees and migrants**

### **1. Border decisions**

47. During his visit to Belgrade International Airport, the Special Rapporteur and his team received full and unrestricted access to a room located in the transit zone of the airport, where persons who have been refused immigration by the Serbian Border Police are held pending their return to their airport of departure.

48. At the time of his visit, the Special Rapporteur and his team were able to interview seven individuals held in the transit zone, one Turkish, one Kurdish, two Iranian and three Indian nationals. These individuals, six male and one female, had been held in the transit zone for more than 24 hours. The material conditions in this room were inadequate for the purposes of detention, the main shortcomings being the absence of beds and heating, deplorable hygienic and sanitary conditions and constant artificial lighting. When tested, the tap water was not running, the premises visibly had not been cleaned for an extended



period of time and all seven persons who were held there were obliged to spend the night sitting in armchairs. However, they had all received meals provided by the airport police.

49. The individuals concerned reported that they had not had the opportunity to contact their embassy or a lawyer and that they had not had access to a translator. The Border Police officers who had refused their entry reportedly had not informed them of their right to seek asylum and had not taken any active measure to identify any potential risk or threat they could face upon return in accordance with the principle of non-refoulement. The Special Rapporteur's team interviewed two individuals who clearly expressed their fear of persecution in case of return and who claimed to have expressed their intention to seek asylum once they had been brought to the transit area, but they had then been informed that this was no longer possible.

50. The Special Rapporteur noted that the considerations underlying and informing the decision of the Border Police to refuse entry and initiate forcible return were not documented with sufficient precision in individual case files and that any such deportation decision did not appear to be subject to a legal remedy involving an individual assessment of the risk of refoulement to a place where the person in question might be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

51. While fully recognizing the sovereign right of Serbia to control immigration, the Special Rapporteur is seriously concerned that refusal of entry and, more importantly, deportation decisions based on the personal perceptions of individual border guards, if not properly documented and subjected to independent judicial review, bears a great risk of arbitrariness and, in certain cases, may well amount to refoulement in violation of human rights law and, in particular, of the prohibition of torture and ill-treatment.

## **2. Conditions in reception centres**

52. Serbia has undertaken significant and meaningful efforts in dealing with the challenges arising from the influx of migrants travelling along the so-called "Balkan route". After the closure of this route in 2016, over 7,000 refugees and migrants, including unaccompanied children, remained in Serbia. With the support of the international community, the Serbian authorities have developed infrastructure and humanitarian assistance to accommodate migrants and refugees in reception centres, irrespective of their decision to apply for asylum. Old facilities, such as former hotels, have been transformed and adapted to respond to the needs of refugees and migrants.

53. The Special Rapporteur and his team visited the temporary reception centres of Adaševci, Obrenovac and Preševo, which are managed by the Commissariat for Refugees and Migrants, and where basic humanitarian and medical support is provided. Material conditions and medical care within these centres were very basic. The Special Rapporteur identified temporary situations of slight overcrowding giving rise to potential risks of tension and abuse among the migrants. He observed that in some units several families were accommodated together in shared spaces, and that in others young adolescents were placed with single men. Furthermore the Special Rapporteur received allegations concerning limitations of migrants' freedom of movement, particularly in Preševo where some migrants complained they had been regularly denied authorization to leave the centre.

54. Most migrants accommodated in such centres do not request asylum in Serbia but are waiting for the possibility of onward travel to States in the European Union. According to the information received from migrants and civil society organizations, European Union States give entry priority to families with children. The Special Rapporteur is concerned that the flow of migration from Serbia to Hungary seems to be managed through an informal ad hoc waiting list in collaboration with the migration authorities in the Hungarian transit zone. The Special Rapporteur is concerned that this practice may be conducive to potential abuse and corruption. Many migrants interviewed complained about the long waiting time, sometimes more than two years, for their name to move up the list. Several interviewees reported that all information about the list was communicated to them by the Commissariat staff, others complained they had to pay bribes to have their name included on the list. The prospect of appearing on the waiting list reportedly deterred many migrants

from seeking international protection while in Serbia and added more uncertainty and frustration to their precarious situation.

55. Furthermore, single men reportedly had almost no prospect of crossing the border through regular channels. They explained that they were in regular contact with smugglers with a view to pursuing their journeys to neighbouring European Union countries. The Special Rapporteur was alarmed by the countless reported attempts made to cross the Serbian border. In order to avoid prolonged waiting periods and to avoid being transferred to reception centres further away from the border, some single men and adolescents chose to live in forests and other unofficial sites close to the international borders, from where they repeatedly attempted to cross to neighbouring countries. That is often done with the help of smugglers, at the cost of their safety and with an increased risk of violence, exploitation and trafficking.

56. The Special Rapporteur notes with grave concern numerous and consistent allegations by single male migrants of having suffered ill-treatment at the hands of the border police of Bulgaria, Croatia and Hungary when attempting to cross the border from Serbia into those States. The migrants concerned reported that they had been beaten with fists and truncheons, kicked or even injured by dogs. Based on interviews conducted with health professionals at migrant reception centres and on his own analysis of individual medical records, the forensic expert accompanying the mission was also able to confirm traumatic injuries consistent with the allegations received.

57. During the visit the Special Rapporteur did not receive any serious allegations about ill-treatment or other abusive behaviour on the part of Commissariat staff. Nevertheless, he is concerned that the procedure for individual complaints, which remains within the hierarchical structure of the Commissariat, does not provide for sufficient independence to ensure a reliable and impartial investigation.

58. The Special Rapporteur encourages the Serbian authorities to complement their humanitarian response with an action plan envisaging long-term and sustainable integration measures in line with the momentum provided by the ongoing reform of the law on asylum.

### **III. Kosovo**

59. In the course of his visit to Kosovo from 21 to 23 November 2017, the Special Rapporteur and his team visited the holding premises of the police station in Pristina, the High Security Prison in Podujevë/Podujevo, the correctional institution of Dubrava prison, and the examination and treatment wards of the psychiatric institute of the Pristina University Hospital.

60. Throughout his visit, the Special Rapporteur was able to meet with representatives of the respective institutions, including management, security and medical staff, and to interview detainees and convicts of his choosing in private, in full compliance with the terms of reference of the mandate of the Special Rapporteur.

#### **A. Legal framework**

##### **1. Criminalization of torture and ill-treatment**

61. Article 27 of the Constitution of Kosovo (2008) provides that no one shall be subject to torture, cruel, inhuman or degrading treatment or punishment, and article 22 of the Constitution expressly guarantees all the human rights and fundamental freedoms that are set out in several international human rights instruments including, among others, the Universal Declaration of Human Rights, the European Convention on Human Rights and its Protocols, the International Covenant on Civil and Political Rights and its Protocols and the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

62. Article 199 of the Kosovo Criminal Code criminalizes torture, in full compliance with international human rights standards, and the prohibition against the use of forced confessions is contained in article 10 of the Code of Criminal Procedure.

## 2. Fundamental safeguards

63. Formally, the fundamental safeguards for the prevention of torture and ill-treatment seem to be in place, including the right to notify one's detention to a relative and the rights of access to legal counsel and to a medical doctor.

64. However, a number of detainees claimed that they did not have access to their ex officio lawyer until after they had been questioned by a police officer. From the time of their arrest until the official start of their interrogation, they were allegedly left in a legal limbo which, in some instances, facilitated the perpetration of police torture and ill-treatment.

65. Moreover, the law on the police does not provide for the right to have access to a lawyer for persons who are held in "temporary police custody" for identification purposes or for their own protection or the protection of others (for a maximum of up to 12 and 24 hours, respectively).

66. The Special Rapporteur therefore strongly recommends that steps be taken to ensure that persons placed in the custody of the police are granted access to a lawyer from the outset of their deprivation of liberty, promptly after arrest.

67. While medical examinations are routinely carried out at the outset of custody, the law on the police does not contain a formal right of access to a doctor for persons held in temporary police custody. The Special Rapporteur urges the relevant authorities to take steps to ensure that persons who are in the custody of the police are granted access to a doctor from the outset of their deprivation of liberty, promptly after arrest.

68. The forensic expert accompanying the mission observed that medical doctors performing these examinations generally had not received any specialized training and therefore lacked the expertise required for the investigation, interpretation and documentation of the physical and psychological signs of torture and other ill-treatment. As a consequence, routine medical examinations did not meet the requirements of reliable forensic examination and the resulting medical reports fell short of internationally recognized standards as reflected in the Istanbul Protocol.

69. Systematic training programmes on the Istanbul Protocol should be implemented for all health professionals who may be called to examine persons deprived of their liberty, as well as for lawyers, prosecutors and judges who may be involved in relevant judicial cases, so as to strengthen their understanding of the potential and limitations of medical examinations in the identification and documentation of the signs of torture and other ill-treatment.

## B. Allegations of torture and ill-treatment

70. The Special Rapporteur welcomes the commitment shown by all officials to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He is also pleased to report that as far as penitentiaries and remand prisons under the authority of the Ministry of Justice are concerned, he did not receive any complaints of ill-treatment except for a few isolated allegations of excessive use of force in disciplinary situations.

71. However, the Special Rapporteur notes with grave concern that he received numerous and consistent allegations of torture and ill-treatment at the hands of the police, most notably as a means of coercing confessions out of individuals during interrogation in police custody. Detainees reported that such abuse consisted mostly of severe beatings, punches and kicking, blows with objects and verbal and psychological threats.

72. In some cases, detainees alleged that the ex officio lawyer assigned to them had acted in collusion with law enforcement officials.

73. While time constraints did not allow for a systematic and comprehensive collection of relevant data, the alleged ill-treatment seemed to be particularly targeted at persons suspected of offences related to narcotics and/or of affiliation with terrorist organizations and other organized crime. The Special Rapporteur also received several allegations of detainees claiming to have been pressured into confessing to crimes they had not committed in exchange for shorter prison sentences or conditional release, sometimes even by the ex officio lawyers assigned to them.

74. For the absolute prohibition of torture and other ill-treatment to be implemented in practice, the authorities in Kosovo must take the necessary measures to prevent, investigate and prosecute all acts of torture and other ill-treatment on the part of the police and ensure that victims are granted judicial redress and compensation.

### **C. Lack of genuine investigations**

75. The Special Rapporteur welcomes the adoption of the law on the ombudsperson in July 2015, which designated the Ombudsperson as the national preventive mechanism against torture and other cruel, inhuman or degrading treatment or punishment, and established a specialized branch for that purpose. The Special Rapporteur encourages the National Preventive Mechanism to continue its crucial role as independent monitor and guardian of the fundamental rights and liberties of Kosovans.

76. The Special Rapporteur further commends the creation of the Police Inspectorate of Kosovo, which is an executive institution under the Ministry of the Interior tasked with carrying out criminal and high-profile investigations into potential cases of misconduct (including torture and ill-treatment) by police officers. Criminal investigations are carried out under the auspices of the competent public prosecutor.

77. While the Police Inspectorate is independent of the Kosovo police and operates under the direct supervision of the Minister of the Interior, whose authority does not include the operational management of the Police Inspectorate of Kosovo, the Special Rapporteur noted with concern that its members were still appointed by the executive.

78. Despite the existence of legal and institutional safeguards, the Special Rapporteur further noted with concern that he had not received any evidence suggesting that, in practice, complaints against police officials about acts of torture and ill-treatment resulted in a significant number of investigations.

79. For the prohibition of torture and other ill-treatment to retain its full significance, the Special Rapporteur urges the relevant authorities to ensure full accountability for police brutality and excessive use of force. He also urges the authorities to ensure that the investigation of allegations of police violence be undertaken by a body fully independent from the executive and reporting to the legislative branch.

### **D. Excessive length of pretrial detention**

80. During his visit, the Special Rapporteur received numerous and consistent complaints from detainees about the perceived excessive length of their pretrial detention and the prolonged absence of any meaningful investigative or judicial action taken on the part of the prosecuting or adjudicating authorities of both Kosovo and the European Union Rule of Law Mission in Kosovo for periods ranging from several months to several years, even in cases where the detainee claimed to have confessed and shown full cooperation. The Special Rapporteur also received numerous complaints from convicts about not having been considered for conditional release, despite having served two thirds of their sentence with good conduct. He also received several allegations of the perceived politicization of criminal trials, including those conducted under the auspices of European Union Rule of Law Mission. While the short duration of his visit did not allow him to collect more comprehensive data in this respect, or to examine the accuracy of individual allegations, the consistency of the individual allegations and with reports from civil society suggests, at a minimum, a certain pattern of inefficiency in prosecutorial and judicial practice in Kosovo

which, in cases exceeding the margins of reasonableness, may well result in arbitrary detention and may even amount to cruel, inhuman and degrading treatment.

## **E. Conditions of detention**

### **Police stations**

81. The Special Rapporteur visited four holding cells in the Pristina police station, which were found to offer acceptable material conditions for short-term detention up to 48 hours.

### **Prisons and correctional centres**

82. The Special Rapporteur found that the material conditions of detention at the newly built high-security prison in Podujevë/Podujevo met the highest international standards and were fully satisfactory. All inmates were held in single-bed cells with shared access to common areas during the daytime from 8 a.m. to 6 p.m.

83. The Dubrava prison dates from the 1980s and was partly rebuilt after the damage caused by NATO airstrikes in 1999. Some of the pavilions have recently been renovated and according to the Director, an additional pavilion is being refurbished every year (currently pavilion 4). The Special Rapporteur is of the view, however, that the use of razor wiring within the confinements of the prison, particularly in the outdoor spaces around each pavilion, does not appear to serve any security purpose and creates an unnecessarily hostile environment. While the medical facilities of the centre are in excellent condition and well organized and equipped, prison staff reported a lack of security cameras in some pavilions and a shortage of adequate detectors to prevent contraband entering the prison.

84. Generally, the infrastructure and material conditions of detention in Dubrava prison were found to be acceptable and in the semi-open section in pavilion 7, the atmosphere was positive and relaxed. However, in the other parts of the prison visited by the delegation and among all other categories of inmates (pretrial section, disciplinary section, reception section, standard regime section), there was a clearly perceptible atmosphere of tension and frustration. Although inmates confirmed that they were being well treated by the prison staff, the Special Rapporteur received a broad range of complaints regarding issues such as the quality of the food, overused mattresses, difficulties in accessing health care, allegations of corruption and of the use of transfers between different detention centres as a disciplinary measure. Issues of particular concern, which seem to have significantly contributed to the rising tension and frustration among inmates, were the prohibition on food parcels from families and the significant reduction of weekend leaves from 21 to only 7 days per year, both of which had been introduced approximately six months earlier by revisions in the application of the law on the execution of criminal sanctions.

85. The Special Rapporteur notes with concern that during his visit he encountered several inmates who had recently inflicted injuries on themselves, generally cuts with razor blades, in order to draw attention to their needs, which may be indicative of a general sense of desperation.

86. Without prejudice to the accuracy of the allegations made, the Special Rapporteur would like to express his serious concern with regard to the mounting tension and frustration in Dubrava prison, which creates very difficult conditions for prison staff and inmates alike and may well result in a situation conducive to violence and escalation.

87. The Special Rapporteur strongly recommends that the relevant penitentiary authorities urgently consider retracting recently introduced restrictions concerning the reception of food parcels and other benefits for all categories of inmates. He also encourages the authorities to establish a system of regular and frequent medical visits in all corridors of Dubrava prison.

## **F. Institutions for persons with psychosocial disabilities**

88. The Special Rapporteur welcomes the adoption of the law on mental health No. 05/L-025 that entered into force in December 2015 and aims to protect and promote mental health. According to article 34 of the law, the relevant ministries are to issue the necessary by-laws within one year from the date of its entry into force. The Special Rapporteur regrets that, two years later, this has still not happened, which impeded the effective implementation of the law. The Special Rapporteur calls upon the authorities to issue the by-laws necessary to implement the law on mental health and to ensure that the placement and treatment of persons with mental disabilities is in accordance with that law and international standards.

89. During the monitoring visit to the admission ward of the psychiatric institute of the Pristina University Hospital, the Special Rapporteur and his team did not receive any allegations of torture or ill-treatment or obtain any other information pointing to such abuse. The material conditions in the institute were generally found to be satisfactory, with adequate staffing and access to medical care.

90. Owing to time constraints, the Special Rapporteur was unable to visit other psychiatric and psychosocial institutions in Kosovo.

## **G. Refugees and migrants**

91. Owing to time constraints, the Special Rapporteur was not able to visit the asylum centre in Kosovo. Nonetheless, the information he obtained during his consultation with civil society indicated that all foreigners who were intercepted while illegally crossing borders and who subsequently requested asylum were transferred to the asylum centre. He was pleased to learn that independent observers had access to the centre and had reported that it provided asylum seekers with accommodation, regular meals and clothing, as well as psychological assessments, counselling services, legal aid and translation. The Special Rapporteur encourages the authorities to establish effective mechanisms and practices for the early detection of persons who are in need of international protection or who are otherwise in vulnerable situations. According to the information received, the authorities tend to outsource security services in such centres to private companies. In that context, the Special Rapporteur reminds the authorities of their duty to ensure that the private companies have staff who are trained to assume their responsibilities.

92. Since his visit, the Special Rapporteur has learned that on 30 March 2018, a new law on asylum (06/L-026) was enacted that abolished the law on asylum of 31 July 2013 (04/L-217). He welcomes the fact that the new law observes the non-refoulement principle and provides guarantees on freedom of protection for vulnerable asylum seekers.

93. The Special Rapporteur is however concerned by the addition of article 18 authorizing the Department for Citizenship, Asylum and Migration within the Ministry of Internal Affairs to detain an applicant in the detention centre for up to eight days without a court decision, when it is deemed necessary for the protection of national security or public order, or in order to determine the applicant's identity, or to decide on their right to enter the territory. He is also concerned that, in exceptional circumstances, this provision seems to allow for children to be detained indefinitely.

94. He would like to remind the authorities that the margins of permissibility of migration-related detention are narrow, in terms of both substantive justification and duration; the mere fact that detention is authorized by national law does not exclude its arbitrariness under international law. In the view of the Special Rapporteur, criminal or administrative detention based solely on migration status exceeds the legitimate interests of States in protecting their territory. Detention based solely on migration status can even amount to torture, particularly when it is intentionally imposed or perpetuated for such purposes as deterring, intimidating or punishing irregular migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, agreeing to voluntary repatriation, providing information or fingerprints, or for reasons based on discrimination of any kind. Last but not least, any detention of children

should be immediately halted as it may amount to arbitrary detention and clearly contradicts the best interest of the child (HRC/37/50, para. 28).

#### **IV. Conclusions**

95. The Special Rapporteur welcomes the genuine and sustained commitment of the authorities in Belgrade and Pristina to overcoming the wounds of the past and their unequivocal determination to prevent torture and ill-treatment in all circumstances.

96. He is pleased to report that, with the exception of a few isolated allegations of excessive use of force in disciplinary cases, he has not received any allegations of torture and other cruel, inhuman or degrading treatment or punishment with regard to prisons under the Ministry of Justice in Serbia and the authorities in Kosovo. The Special Rapporteur is gravely concerned, however, at numerous and consistent allegations received with regard to the misconduct of the police in both Serbia and Kosovo. In both Serbia and Kosovo, therefore, the next step in the fight against impunity and arbitrary detention must focus on the respective police forces and judicial systems.

97. In both Serbia and Kosovo, the Special Rapporteur and his team received numerous and consistent allegations regarding torture and ill-treatment being used during police interrogation, most notably as a means of coercing individuals to confess to offences related to narcotics, terrorism and organized crime, areas in which the international community has long pressured both Serbia and Kosovo to deliver results.

98. In both Serbia and Kosovo, the pressure on detainees to confess is further exacerbated by the prospect of excessively long pretrial detention, which may last up to three or more years, even for minor offences.

99. In both Serbia and Kosovo, the allegations of torture and ill-treatment received by the Special Rapporteur are not isolated incidents, but suggest the existence of pattern of abuse that is well entrenched in the predominant police culture. It is therefore of the utmost urgency for the authorities in both Serbia and Kosovo to move away from police investigations based on unreliable confessions and towards modern methodologies based on the collection of accurate and reliable information obtained through forensic, non-coercive interviewing and investigation (see A/71/298).

100. The Special Rapporteur is seriously concerned at the reported inefficiency of prosecutorial and judicial practice throughout Serbia and Kosovo, which may well result in arbitrary detention and, in some cases, even amount to cruel, inhuman or degrading treatment or punishment.

101. In various institutions in both Serbia and Kosovo, the Special Rapporteur observed significant room for improvement in the overall conditions of detention, including inmates' access to open areas, telephone calls and visits, as well as to work and other meaningful activities.

102. The Special Rapporteur recognizes the considerable efforts and investments made in both Serbia and in Kosovo over the past two years to deal with the large volume of migrants using the so-called Balkan route. He welcomes the commitment of the relevant authorities to developing the infrastructure and humanitarian assistance required to tackle this challenge.

103. The Special Rapporteur encourages the Government of Serbia and the authorities in Kosovo to further strengthen their ongoing efforts to provide adequate medical and psychological support and rehabilitation to all victims of torture and other ill-treatment present on their territory and to ensure the effective international protection of migrants and refugees.

## A. Recommendations to the Government of Serbia

104. In regards to the legal and institutional framework, the Special Rapporteur recommends that the Government of Serbia:

(a) Amend the definition of the crime of torture under article 137 of the Criminal Code so as to criminalize the full spectrum of acts covered by articles 1 and 16 of the Convention against Torture, significantly increasing the maximum penalties for such offences, and removing all statutes of limitations for such offences;

(b) Ensure that prosecutors do not apply the shortened procedure when investigating cases of alleged torture and ill-treatment;

(c) Ensure that any person apprehended by the police gets access to a lawyer before first being questioned by the police;

(d) Introduce an institutionally independent roster system for the selection and appointment of certified ex officio counsel, in order to ensure minimum standards of expertise, experience and conduct for criminal defence lawyers;

(e) Implement systematic training programmes on the Istanbul Protocol for all health professionals who may be called to examine persons deprived of their liberty, as well as for all lawyers, prosecutors and judges who may be involved in relevant judicial cases, so as to strengthen their understanding of the potential and limitations of medical examination in the identification and documentation of the signs of torture and other forms of ill-treatment;

(f) Ensure that all relevant investigations are undertaken by bodies enjoying full independence from the executive branch and reporting to the legislative or judiciary branches;

(g) Strengthen the capacity of the National Preventive Mechanism, particularly in terms of independent and adequate funding and staffing, and encourage the Deputy Ombudsperson to continue to assume his crucial role as the national preventive mechanism against torture and other cruel, inhuman or degrading treatment or punishment;

(h) Provide alternatives to incarceration in the pretrial stage of proceedings, including for the purpose of ensuring appearance at trial, and ensure that pretrial detention is the exception rather than the rule and that any judicial decision to remand defendants to pretrial detention is carefully justified in each case and based on strict criteria, such as the likelihood of them absconding or repeating the alleged offence.

105. In regard to the conditions of detention, the Special Rapporteur recommends that the Government of Serbia:

(a) Consolidate and develop ongoing prison reforms to ensure better conditions of detention and prevent any deterioration;

(b) Take the steps necessary to prevent prison overcrowding, in particular by reviewing the rules governing eligibility for parole and early release;

(c) Ensure that inmates who show signs of mental disability or illness are removed from prisons and receive adequate treatment in mental health hospitals or other appropriate settings, and allow the courts to order such removals;

(d) Consider reducing penalties for non-violent offences, in particular offences involving the use of drugs, thus allowing imprisonment to be replaced with measures involving appropriate medical treatment and therapy;

(e) Increase the number of hours that all categories of inmates are allowed to access open areas and improve the quality of the common spaces, including repair of old structures, fresh painting of the walls and adding tables and chairs;



(f) Offer more and meaningful work opportunities and activities, conducive to both physical and mental health, to inmates in semi-open and closed establishments, particularly those serving long sentences, including life sentences;

(g) Ensure the access of persons in pretrial detention to as much social contact and physical activity as possible, taking into account that pretrial detention is not a punitive regime and remains governed by the presumption of innocence;

(h) Ensure that adequate psychological treatment is readily available in cases where inmates have inflicted self-injury, or show behaviour suggesting they may do so, and provide training to prison personnel so that they can identify and deal with early signs of potential mental illness;

(i) Ensure fair process in relation to solitary confinement and other disciplinary measures, including by guaranteeing inmates legal remedies to challenge the decision and ensure an independent review;

(j) Ensure the availability of effective in situ complaints mechanisms by providing for confidential and anonymous access to sealed complaint boxes for all inmates, including those in closed or high-security regimes;

(k) Consider revising the applicable regulations and practices so as to facilitate, to the maximum extent possible, visits and other communication with the outside world, particularly for pretrial detainees.

106. In regard to the prevention of torture and other ill-treatment, the Special Rapporteur recommends that the Government of Serbia:

(a) Provide the regulations, instructions and training required for ensuring the transition from an unreliable, confession-based interrogation system to a modernized forensic, non-coercive investigation methodology aimed at accurate and reliable establishment of the facts;

(b) Ensure accessible, fully independent, expedient and effective complaints, oversight and investigative mechanisms for the prevention, investigation and prosecution of abuse, not only by police and prison staff, but by officials from all branches and services of government;

(c) Ensure systematic medical examinations by independent medical personnel trained in the effective investigation, interpretation and documentation of the signs of physical and psychological torture and other forms of ill-treatment, based on the Istanbul Protocol. In particular, ensure that photographic documentation of trauma injuries becomes routine practice, including by making available appropriate equipment in all medical services;

(d) Establish a fully independent police complaints body and consider including in the composition of the independent investigation mechanism one or more independent forensic experts;

(e) In order to ensure consistency in the documentation of physical and psychological trauma, take measures to ensure full compliance with international standards, as set out in the Istanbul Protocol;

(f) Establish dedicated interview rooms with audio and/or video equipment for the systematic recording of all investigative interviews conducted by police and other investigating authorities.

107. In regard to institutions for persons with psychosocial disabilities, the Special Rapporteur recommends that the Government of Serbia:

(a) Establish effective, independent, and multidisciplinary mechanisms for the supervision of institutions for persons with psychosocial disabilities and for the regular review of any decision to institutionalize or deprive such persons of their legal capacity;

(b) Facilitate deinstitutionalization of persons with psychosocial disabilities, particularly by introducing into the social welfare law a clear categorization of various forms of assisted living made available to persons in need;

(c) In addressing the needs of persons with psychosocial disabilities, adopt policies and protocols that uphold autonomy, self-determination and human dignity and safeguard free and informed consent on an equal basis for all individuals without any exception or discrimination, whether based on disability or for any other reason;

(d) Prohibit the institutionalization of persons with disabilities merely on the grounds of their disability without their free and informed consent;

(e) Prohibit any forced and non-consensual medical interventions merely on the grounds of a person's disabilities, such as the non-consensual administration of psychosurgery, electroshock treatment and mind-altering drugs such as neuroleptics, and the use of restraints and solitary confinement, including for both long- and short-term application. Instances of treatment without informed consent should be investigated and redress should be provided to victims of violations;

(f) Replace forced treatment and institutionalization with services in the community. Such services must meet needs expressed by persons with disabilities and respect their autonomy, choices, dignity and privacy.

108. In regard to migrants and asylum seekers, the Special Rapporteur recommends that the Government of Serbia:

(a) Ensure adequate material conditions in any holding area, including in areas such as airport transit zones, where persons may be held pending their deportation or return to their airport of departure;

(b) Ensure that decisions taken by the border authorities, including refusals of entry and, more importantly, deportation decisions, are carefully documented and subjected to independent judicial review, and that any person affected by such measure be informed of their rights, including the right to legal remedy and legal counsel, in a language they understand;

(c) Strengthen the independence of the complaints and oversight mechanism in the reception camps by providing for confidential and anonymous access to sealed complaint boxes that can only be accessed by the office of the Commissioner for Refugees and Migrants and not the staff in charge of the camp;

(d) Ensure that all service providers who come into direct contact with migrants receive training, commensurate with their function, on relevant international human rights standards, including the principle of non-refoulement and the Istanbul Protocol for the investigation and documentation of the signs of torture and other ill-treatment;

(e) Strengthen their ongoing efforts to provide adequate medical and psychological support and rehabilitation to all victims of torture and other ill-treatment present on Serbian territory and, in any event, abstain from any push-back or other forms of refoulement of migrants into territories where they may be exposed to the risk of torture or other ill-treatment.

## **B. Recommendations to the authorities in Kosovo**

109. In regard to the legal framework and preventive safeguards, the Special Rapporteur recommends that the authorities in Kosovo:

(a) Criminalize other cruel, inhuman or degrading treatment or punishment in the same comprehensive terms as torture;

(b) Expressly exclude the admissibility of evidence obtained through torture or other cruel, inhuman or degrading treatment or punishment;

(c) Ensure that everyone has access to a lawyer before being first questioned by the police;

(d) Introduce an institutionally independent roster system for the selection and appointment of certified *ex officio* counsel, in order to ensure minimum standards of expertise, experience and conduct for criminal defence lawyers;

(e) Ensure that everyone has access to a medical doctor promptly after arrest;

(f) Introduce systematic training programmes on the Istanbul Protocol for all health professionals who may be called to examine persons deprived of their liberty, as well as for all lawyers, prosecutors and judges who may be involved in relevant judicial cases, so as to strengthen their understanding of the potential and limitations of medical examination in the identification, interpretation and documentation of the signs of torture and other forms of ill-treatment;

(g) While fully recognizing that deprivation of liberty in accordance with international standards remains a necessary and legitimate investigative measure and sanction in any system governed by the rule of law, the Special Rapporteur urges the prosecuting and judicial authorities of Kosovo to take all necessary and appropriate measures to reform their practices, with a view to reducing and avoiding unnecessary, excessive or otherwise arbitrary deprivation of liberty.

110. In regard to accountability, the Special Rapporteur recommends that the authorities in Kosovo:

(a) Ensure that all allegations of torture and other ill-treatment are investigated by bodies enjoying full independence from the executive branch and reporting to the legislative or judiciary branches;

(b) Strengthen the National Preventive Mechanism, particularly in terms of independent and adequate funding and staffing;

(c) Encourage the Ombudsperson to continue to assume his crucial role as the independent preventive mechanism in Kosovo against torture and other cruel, inhuman or degrading treatment or punishment;

111. In regard to the conditions of detention, the Special Rapporteur recommends that the authorities in Kosovo:

(a) Retract or significantly readjust recently introduced restrictions concerning the reception of food parcels and other relevant benefits for all categories of inmates in Dubrava prison and any other facilities where such restrictions may apply;

(b) Establish a system of regular and frequent medical visits in all corridors of Dubrava prison and take other appropriate measures to ensure the provision of adequate health-care services in accordance with rules 24–35 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules);

(c) Ensure that all prisoners are held in conditions (accommodation, personal hygiene, clothing and bedding, food, exercise and sport) that are at a minimum in accordance with the Nelson Mandela Rules, treated with respect and offered a purposeful range of activities which prepares them for reintegration into the community;

(d) Guarantee that persons affected by mental disease, disability or distress, including depression and post-traumatic stress, receive appropriate treatment and care by qualified health professionals, including with a view to preventing self-inflicted injuries and suicide.

112. In regard to the prevention of torture and ill-treatment, the Special Rapporteur recommends that the authorities in Kosovo:

(a) Provide the regulations, instructions and training required for ensuring the transition from an unreliable, confessions-based interrogation system to a

modernized forensic, non-coercive investigation methodology aimed at accurate and reliable establishment of the facts;

(b) Ensure accessible, fully independent, expedient and effective complaints, oversight and investigative mechanisms for the prevention, investigation and prosecution of abuse, not only by police and prison staff, but by officials from all branches and services of government;

(c) Ensure systematic medical examinations by independent medical personnel trained in the effective investigation, interpretation and documentation of the signs of physical and psychological torture and other forms of ill-treatment based on the Istanbul Protocol. In particular, ensure that photographic documentation of trauma injuries becomes routine practice, including by making available appropriate equipment in all medical services;

(d) Ensure systematic, accurate and reliable police records regarding the moment of apprehension, the time of transfer and the precise duration of police custody;

(e) Ensure prompt notification of custody to relatives as identified by the person apprehended and prompt and automatic access to ex officio lawyers and confidential medical examinations for all persons apprehended, arrested, or otherwise deprived of their liberty.

113. In regard to institutions for persons with psychosocial disabilities, the Special Rapporteur recommends that the authorities in Kosovo:

(a) Establish effective, independent and multidisciplinary mechanisms for the supervision and regular review of any decision to institutionalize persons affected by psychosocial disabilities and facilitate deinstitutionalization by introducing community-based alternatives;

(b) In addressing the needs of persons with psychosocial disabilities, adopt policies and protocols that uphold autonomy, self-determination and human dignity, and safeguard free and informed consent on an equal basis for all individuals, without any exception or discrimination, whether based on disability or for any other reason.

114. In regard to migrants and asylum seekers, the Special Rapporteur recommends that the authorities in Kosovo refrain from policies of mandatory, prolonged or indefinite detention of migrants. Any migration-related detention should remain an exceptional measure and should be physically separated from detention relating to the criminal justice system. Migrants, especially children, should never be detained solely because of their irregular migration status or simply because they cannot be expelled.

---