

JUVENILE CORRECTIONAL INSTITUTIONS IN REPUBLIKA SRPSKA

**Spot report on
the opening of Tunjice
educational-reformatory
home**



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1. Introduction

The OSCE Mission to Bosnia and Herzegovina (hereafter the OSCE Mission or the Mission) welcomes the recent commencement of operations at the Tunjice juvenile institution. This separate house for confinement of juveniles within the compound of the Penal-Correctional Institution Tunjice near Banja Luka is the only facility in the Republika Srpska (RS) where juveniles in conflict with the law can be accommodated under institutional correctional measures.¹

Bearing in mind past practice in the RS, this report demonstrates the positive impact the Tunjice juvenile institution may have on the effective rehabilitation of juvenile offenders within the judicial and penal-correctional system, which is one of the principles of the July 2006 National Strategy against Juvenile Offending. The report also points to remaining concerns regarding the treatment of juveniles in conflict with the law and respect for their basic human rights, as established by international instruments and reflected in Entity law.

2. The Law Governing the Deprivation of Liberty of Juveniles

(a) International standards applicable in Bosnia and Herzegovina

The UN Convention on the Rights of the Child of 1989 (hereafter CRC), a legally binding international treaty, is the most important international document that establishes the minimum international standards pertaining to juvenile justice in general and deprivation of liberty of juveniles in particular. Bosnia and Herzegovina is bound by the CRC through succession since 1 September 1993. Article 37 protects the juvenile against torture and cruel, inhuman or degrading treatment or punishment; capital punishment or life imprisonment without possibility of release; and against unlawful or arbitrary deprivation of liberty. Article 37(b) prescribes that the deprivation of liberty of juveniles should be in conformity with the law and used only as a measure of last resort and for the shortest possible time.² In addition,

¹ The problem of juvenile offending in general and the execution of juvenile correctional measures requiring their confinement in particular was raised in several studies conducted and financed by UNICEF, Save the Children UK, the Soros Foundation and the Ombudsman of the RS. These studies developed and laid a foundation for the July 2006 *National Strategy against Juvenile Offending*.

² This rule is further developed in the UN Rules for the Protection of Juveniles Deprived of Their Liberty (hereafter UN Rules for JDL), Part I, Rules 1 and 2; and the UN Standard Minimum Rules for the Administration of Juvenile Justice (hereinafter the Beijing Rules), Part III, Rule 13.1.

this Article regulates conditions for arrest and deprivation of liberty of juveniles, including detention, confinement and imprisonment.

The CRC is complemented by a series of special UN resolutions pertaining to juvenile justice. These rules and guidelines are non-binding legal instruments, but they are essential for interpreting the CRC and addressing the issue of juvenile justice in a more comprehensive manner. The most relevant of these instruments are the 1990 UN Rules for the Protection of Juveniles Deprived of Their Liberty (hereafter UN Rules for JDL) and the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). Another relevant instrument is the Standard Minimum Rules for the Treatment of Prisoners of 1957, the first international document establishing the principle of separation of minors from adults.

The following standards regarding the juveniles' deprivation of liberty are of particular relevance to the operations at Tunjice juvenile institution:

- Juveniles deprived of their liberty must be separated from adults, unless the opposite is in the best interest of the child.³ This applies to the separation of male juveniles from male adults as well as for the separation of female juveniles from female adults.⁴
- Services and facilities for juveniles deprived of their liberty must meet all requirements of health and human dignity. Amongst other things, this pertains to physical environment and accommodation.⁵
- Educational services must be provided to juveniles deprived of their liberty. To the extent possible, education should take place outside the detention facility in programmes integrated into the educational system in the country. Juveniles must also be guaranteed the right to receive vocational training.⁶
- Juveniles must have the opportunity to perform work which must be adequately remunerated.⁷
- Juveniles have the right to receive adequate medical treatment, both preventive and remedial. This includes specialised programmes on drug abuse prevention and psychosocial counselling.⁸
- Juveniles have the right to regular contacts with their families and the wider community, through *inter alia* frequent visits, letters and other means of telecommunication.⁹

(b) Domestic law in the Republika Srpska

Most of the international minimum standards have been incorporated into RS law. Domestic provisions allow juvenile judges to order confinement and, exceptionally, custody during the preparatory proceedings and throughout the main trial. Besides correctional measures requiring the confinement of the under-age offender in a closed-type institution, institutional correc-

³ Article 37(c) 1989 Convention on the Rights of the Child (hereafter CRC); UN Rules for JDL, Part IV C, Rule 29; the Beijing Rules, Rules 13.4 and 26.3.

⁴ In addition, 'Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders', the Beijing Rules, Rule 26.4.

⁵ Article 37(c) CRC; UN Rules for JDL, Part IV D, Rules 30 – 37; the Beijing Rules, Rules 13.5 and 26.2.

⁶ UN Rules for JDL, Part IV D, Rules 38 – 46; the Beijing Rules, Rules 26.1 and 26.6.

⁷ UN Rules for JDL, Part IV D, Rules 43-46.

⁸ Article 37(c) CRC; UN Rules for JDL Part IV H, Rules 49 – 55, Part V Rule 81.

⁹ Article 37(c) CRC; UN Rules for JDL Part IV I, Rules 60 – 62; the Beijing Rules, Rule 26.5.

tional measures¹⁰, juvenile judges may pronounce imprisonment for minors of 16 years of age and older who have committed one of the enumerated list of offences.¹¹ Domestic law, however, prescribes certain safeguards for the protection of juveniles to ensure compliance with the aforementioned international standards in cases involving the deprivation of liberty:

- Minors must be imprisoned or detained in special juvenile institutions or units within penal institutions separate from adults.¹²
- Juvenile judges may impose institutional measures requiring confinement of the juvenile in specialised juvenile institutions (i.e., educational institution, educational reformatory home, or another rehabilitation institution).¹³ Correctional measures are pronounced without a guilty verdict.¹⁴
- Custody may be ordered only exceptionally and must be reduced to the shortest possible time; detention may not exceed 30 days.
- The juvenile panel has to review the necessity of custody every ten days; the juvenile panel may extend detention for two more months if there are legal reasons for the extension; after the completion of the preparatory proceedings, detention may last six more months at a maximum; after the extension, custody must be reviewed at least every month.¹⁵
- Juvenile criminal sanctions and correctional measures primarily aim to ensure the education, correction and proper development of juveniles, and to prevent them from committing criminal offences in the future.¹⁶
- The institution must provide general or vocational education to juveniles.¹⁷
- If education is not available within the institution, juveniles may attend school outside the institution.¹⁸ The juvenile shall have 30 leave days annually, which should be spent outside the institution.¹⁹

¹⁰ Juvenile judges can pronounce correctional *recommendations* such as apology, compensation etc., Art. 67 the RS Criminal Code (RS CC), *the Official Gazette of the RS* No. 49/03 and 108/04, or correctional *measures*. The three types of correctional measures are: (1) disciplinary measures such as court reprimand and confinement in a disciplinary centre for juveniles (Art. 73, 74 RS CC); (2) measures of intensified supervision by parents, social protection authority, etc. (Art. 75-78 RS CC); and (3) institutional measures: confinement in an educational institution, in an educational reformatory home, or in another rehabilitation institution (Art. 79, 80, 81 RS CC). *See also* Art. 363; Art. 364 in connection with Art. 189.1(a)-(c); Art. 372 RS Criminal Procedure Code (RS CPC), *the Official Gazette of the RS* No. 50/03 and 111/04., Article 267 the Law on the Execution of Criminal Sanctions and Sanctions Passed in Minor Offences Proceedings in the Republika Srpska (RS LECS), *the Official Gazette of the RS* no. 64/01, 17 December 2001.

¹¹ Article 69.1 and Art. 69.2, Art. 87, 88 RS CC.

¹² Article 365.1 RS CPC, Art. 14.4, 200-205 RS LECS.

¹³ Articles 79, 80, 81 RS CC.

¹⁴ Article 374.3 RS CPC.

¹⁵ Article 364.4 RS CPC; see *The Commentary on the New BH CPC*, published by the Council of Europe and the European Commission in 2005, p. 897 on the equivalent Article 358.4 BH CPC.

¹⁶ CRC Article 66 lit (b) and 70 RS CC, see also for execution of juvenile measures Article 238 RS LECS.

¹⁷ Article 238.3 RS LECS.

¹⁸ Article 270 RS LECS.

¹⁹ Article 274 RS LECS.

3. The Situation in the Republika Srpska – Before and After the Opening of Tunjice

Due to the repeated delay of operations at the Tunjice institution as a functioning educational-reformatory home (hereafter reformatory) for juveniles, until October 2006 the judicial authorities in the RS often refrained from pronouncing any of the measures requiring institutional treatment of juvenile offenders. Instead, and as a juvenile justice survey conducted by the OSCE Mission in late 2005 shows, the RS judiciary was left with less suitable choices for the rehabilitation of juvenile offenders, i.e. either imprisonment, permissible only for juveniles 16 years of age or older, or intensified supervision by parents or the social protection authorities.²⁰ When institutional correctional measures were ordered, law enforcement agencies were nevertheless unable to execute them. More so, juvenile suspects, who also have a right to be detained separately from adults, were deprived of their liberty under unlawful conditions.

Hence, in one of the cases monitored by the OSCE Mission, a juvenile spent almost two and a half years deprived of liberty together with adults in penal-correctional institutions for adults.²¹ These institutions were unable to provide the treatment to the juvenile required by international standards and domestic law (most importantly, the separation from adults, education and correctional programmes) due to the lack of facilities, skilled staff, and training and educational programmes in order to implement the decisions effectively and lawfully.²² The environment and services available in those institutions were not adequate for the protection of the minor and the achievement of the purpose of the pronounced correctional measure, i.e., the education, correction and proper development of juveniles with the aim of preventing them from committing criminal offences in the future.²³

Since the commencement of operations at the Tunjice reformatory in October 2006, the court system has placed a handful of juveniles there. The penal authorities in Banja Luka have employed professional staff, who are receiving additional training; furnished a house with a capacity to accommodate 20 juveniles outside the walls but within the compound of the PCI Tunjice. A co-operation with a school in the vicinity of the institution is currently under negotiation to provide the juveniles with education outside the reformatory. However, the fact that the administration of the juvenile reformatory is part of the prison administration entangles the administrations of two types of institutions which should best remain separate.

The Mission is concerned about the close proximity of the juvenile reformatory to the PCI Tunjice/Banja Luka - a prison. Although physically separated, the juvenile home will be perceived as part of the prison, both by the juveniles and the society²⁴, adding a stigma which the juveniles that are not convicted with a guilty verdict do not deserve and which could

²⁰ Intensified supervision entails court instructions on particular duties to supervise the minor's education and behaviour, Art. 75, 77 RS CC.

²¹ Seven months in detention and almost two years in prison in execution of his correctional measure "confinement in an educational reformatory home".

²² The OSCE Mission acknowledges that the authorities at the PCI Tunjice made considerable efforts to provide the minor with better living conditions, placing him in an unlocked room with a TV, together with another minor, not imposing movement restrictions within the facility, and providing some basic and vocational education.

²³ The OSCE Mission recently obtained information within its trial monitoring programme according to which a new case is pending against the same young adult, charging him with two aggravated thefts allegedly committed after his release from the PCI Tunjice/Banja Luka. The indictment could not be delivered to him, reportedly because he is incarcerated in the Zenica prison.

²⁴ This perception as a prison was already reflected by the media coverage of the opening: "School behind the bars – There will soon be a prison for juveniles in the RS" read the headline of an article in Euroblic, 18 September 2006.

adversely affect their correction and reintegration into society. Another concern is a likely contact of juveniles with adult prisoners, for instance when working in the same place. Furthermore, the continued lack of necessary by-laws and procedural instructions from the Ministry of Justice raises some concerns with a view to a proper functioning of the institution. Finally, despite the fact that numerous court decisions had been awaiting their execution in Tunjice²⁵, by the end of 2006 only a handful of juveniles were serving the measure in the institution. The OSCE Mission is concerned that some of the juveniles may actually be confined in adult prisons.

²⁵ According to the RS Ombudsman, 22 court decisions imposing “confinement in an educational-reformatory home” were passed in 2003 awaiting enforcement in Tunjice, “*Special Report regarding the implementation of correctional recommendations, correctional measures and execution of criminal sanctions towards minors*”, No. 1333/05, Banja Luka May 2005.

4. Conclusion and Recommendations

Until recently, the measures provided in the law could not be executed due to the lack of juvenile educational-correctional institutions. As a consequence, judges could not utilise a full range of options necessary to ensure that juvenile sanctions are tailored to juveniles, according to both international standards and domestic law. The execution of correctional measures in institutions where juveniles receive no special attention, correctional programme or education and have frequent contact with adults is in breach of both international standards and domestic law. It clearly does not contribute to the rehabilitation and re-socialisation and correction of juveniles, and may even have the opposite effect.

With the opening of the Tunjice reformatory for juveniles, this situation can be alleviated if the home is administered according to international standards and domestic law as outlined in this report. Most importantly, the RS Government needs to continue to prioritise the support to the institution, issue the necessary by-laws and procedural instructions, and keep this institution entirely separate from the adult prison, both in terms of administration and budget. The authorities in charge of the reformatory need to ensure education for minors and prevent all their contacts with adult prisoners.

While the Mission welcomes the fact that the Tunjice reformatory for juveniles has become operational, it must emphasise that a home for the enforcement of institutional correctional measures should not be placed in the vicinity of penal-correctional institutions, as this situation may adversely influence the purpose of correctional measures. In addition, there is a demonstrated need to establish a facility for serving juvenile imprisonment sentences and detention measures, which so far has not been adequately addressed. In order to clearly distinguish between a juvenile prison for offenders who have received a guilty verdict and juvenile reformatory for those who have not received a guilty verdict, the facility within the PCI Tunjice/Banja Luka should rather be transformed into a juvenile imprisonment and detention facility, while the reformatory should be gradually moved to a more appropriate location.²⁶

²⁶ Note that Mr Boško Đukić, the RS Assistant Minister of Justice, stated for the BL LIVE on 29 September 2006 that "...it is not the best possible solution to have these two institutions next to each other because older inmates may exert negative influence on juveniles...". Available at: http://www.banjalukalive.com/Banja_Luka/Banja_Luka/Otvoren_popravni_dom_za_maloljetnike_200609292290/, last visited on 15 December 2006.

Recommendations

To RS Government:

- Provide the financial and administrative resources necessary to maintain the Tunjice juvenile institution as a functional facility for correctional measures of juvenile confinement.
- Find a solution for the accommodation of female juvenile offenders in an equivalent home.

To the RS Ministry of Justice and the Banja Luka penal authorities:

- Enable primary and secondary education of juvenile offenders in accordance with applicable standards outside the institution if possible, or ensure the provision of education conducted within the institution. Juvenile offenders that have not completed primary education should be given the opportunity to do so.
- Provide correctional-reformatory programmes to juvenile offenders that are adequate for achieving the purpose of the correctional measure, in particular the rehabilitation of the juvenile and prevention of future criminal offences.
- Make available health services, drug prevention programmes and psychosocial counselling to minors.
- Keep the administration of the juvenile educational-reformatory home separate from the administration of the PCI Tunjice/Banja Luka.
- Temporarily use the educational-reformatory home also for juvenile pre-trial custody, until a solution is found for the lawful detention of juveniles in the RS separate from adults.
- Draft and issue the necessary by-laws and procedural instructions for the operations at the reformatory.

To juvenile judges and panels:

- Promptly issue decisions on referring to Tunjice all juveniles with decisions of confinement in an educational-reformatory home in order to commence the execution of these measures.
- Send to Tunjice also juveniles under pre-trial custody orders, strictly adhering to the principle that detention be ordered only if absolutely necessary.

To the RS penal institutions and the centres of social work as guardianship institutions:

- Initiate a proceeding in accordance with the RS *Law on the Execution of Criminal Sanctions and Sanctions Passed in Minor Offences Proceedings* in order to ensure that all juveniles with imposed correctional measures who are presently placed in adult prison or detention facilities are transferred to Tunjice.

To the RS Ministry of Justice in the medium-term:

- Establish a proper juvenile institution for the execution of correctional measures entirely separate from the infrastructure and the administration of the penal-correctional system.
- Once a proper juvenile institution for the execution of correctional measures has been established as recommended, use a separate building for juveniles in the vicinity of the PCI Tunjice/Banja Luka for the lawful execution of juvenile imprisonment sentences.

