



**REPUBLIC OF SERBIA  
PROTECTOR OF CITIZENS**

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On the basis of Article 138 paragraph 1 of the Constitution of the Republic of Serbia (*Official Gazette of RS*, No. 98/06) and Article 1 paragraph 1 and Article 31 paragraph 2 of the Law on the Protector of Citizens (*Official Gazette of RS*, Nos 79/05 and 54/07), in the procedure of controlling the legality and regularity of work of the Penitentiary-Correctional Institute Požarevac – Zabela of the Directorate for Execution of Penitentiary Sanctions of the Ministry of Justice, initiated upon the complaint of A.B., the Protector of Citizens hereby

**E S T A B L I S H E S**

**In the Penitentiary-Correctional Institute Požarevac – Zabela, the A.B.'s right to mental and physical integrity was violated when on 24 December 2011 he was subjected to torture and when the officials inflicted upon him bodily injuries.**

**The physical injuries inflicted upon A. B. were not recorded in the official files, the Governor of the Institute was not informed about them and A. B. was not taken to a medical examination, by which his right to health care was violated.**

Based on the established deficiencies in work, the Protector of Citizens refers to the Penitentiary-Correctional Institute Požarevac – Zabela the following

**R E C O M M E N D A T I O N S**

**The Penitentiary-Correctional Institute Požarevac – Zabela will take all available measures in order to establish the responsibility of the officials for violence used against A. B. on 24 December 2011 as well as for the failure to record the inflicted bodily injuries, inform the Governor of the Institute thereof, and the failure to take A. B. to a medical examination.**

**The Penitentiary-Correctional Institute Požarevac – Zabela will protect in its future work the right of all persons deprived of liberty to inviolability of mental and physical integrity and take all available measures to prevent torture or any other form of abuse.**

**The Penitentiary-Correctional Institute Požarevac – Zabela will record in its future work each individual case of bodily injury infliction upon the persons deprived of liberty and inform the Governor of the Institute thereof without delay, and take immediately an injured person to a medical examination.**

The Penitentiary-Correctional Institute Požarevac – Zabela will inform the Protector of Citizens about the implementation of this recommendation within 60 days of receiving it.

## Rationale:

A. B. filed a complaint with the Protector of Citizens stating that in the Pavilion VII of the Penitentiary-Correctional Institute Požarevac – Zabela he was subjected to unlawful actions by the officials.

Acting upon the complaint and taking into consideration the fact that the complainant suffered visible bodily injuries, the expert team of the Protector of Citizens, including a medical doctor Associate Professor Đorđe Alimpijević, MD, in accordance with the authority referred to in Article 22 of the Law on the Protector of Citizens, on 27 December 2011 visited the complainant in the Penitentiary-Correctional Institute Požarevac – Zabela. A statement was taken from the complainant; he was examined; the official documentation was inspected and the statements were taken from the Governor of the Institute and the Medical Doctor S. S.

Having performed all these actions, it has been established that the official records of the Penitentiary-Correctional Institute Požarevac – Zabela contain the record on the use of coercive measures towards the convicted person A. B. on 22 December 2011. Having reviewed the case file that was created on the occasion of applying coercive measures - physical force, it was established that a report No. .../2011-01 of 22 December 2011 was submitted to the Ministry of Justice, the Directorate for Execution of Penitentiary Sanctions, which *inter alia* states that the means of coercion - physical force and a rubber baton were used after the resistance of the prisoner A. B. in the corridor, when he was ordered to enter the room. The resistance consisted of "grabbing the heating tubes and crouching down" and then the baton was used in order to make him go back into the room.

Based on the report of the medical doctor S. S. of 23 December 2011, it was determined that on 22 December 2011, around 12.50 p. m., the officials brought A. B. to the medical examination due to the use of coercive measures - physical force and a baton. Having examined the convicted person, the medical doctor diagnosed the following injuries: more red stripes were present in the localised area of the back, the longest stripe was about 15x5 cm, without swelling of the surrounding tissue and without the interruption of continuity of the skin. A control check-up was made on 23 December 2011 about 9 a.m. and the following was concluded: in the area of both shoulder blades more striped hematoma were visible and red lines, with one spreading hematoma in the area between the shoulder blades closer to the left shoulder blade, measuring about 10x10 cm, without the swelling of local tissue and without the interruption of continuity of the skin.

In direct conversation with the team of the Protector of Citizens, A. B. stated that the injuries were inflicted on two separate occasions. Namely, on 22 December 2011, between 12-13 p. m. in the corridor of the basement of the Pavilion VII, the members of the Security Service requested from him to take off his upper clothing, i.e. to remain naked from the belt up. He was also required to turn his face towards the wall at some 30 centimetres away from the wall with his legs slightly spread, then to lean his body slightly forward, to raise his hands and place his palms on the wall. In this position, he suffered a large number of blows with a baton on the upper half of his back. He said that on that occasion he did not lose consciousness.

After being thus injured, he was brought to a medical doctor in the dispensary. He was examined in the presence of the members of the Security Service. The following day, 23 December 2011, the same medical doctor visited him in his room in the Pavilion VII and on that occasion measured his blood pressure without performing any other examination.

The following day, 24 December 2011, he had a visit. Upon the completion of his visit that day, between 14 and 15 p. m., he was again beaten by the members of the Security Service in the corridor of the basement of the Pavilion VII in front of his room. On that occasion, they again requested from him to stand in the aforementioned position, and then more commanders were beating him with batons on his arms, back, buttocks and the back of his legs. After that, when he was standing with his back to the wall, he received several blows on the head with fists, and one of the members of the Security Service struck him over his left ear with the open hand. Instantly, he felt pain and then blood started to pour out of his ear. He stated that he could hear with his left ear. After the events of 24 December 2011, he was neither taken to the medical doctor nor did the doctor visit him in his room. He stated that he himself put some paper in his left ear, from which blood was dripping.

Based on the immediate findings and opinion of the Protector of Citizens' expert team member Associate Professor Đorđe Alimpijević, MD, an expert recognised among his colleagues, permanent court appointed forensic expert and member of the European Committee for the Prevention of Torture, it was established that in the period from 22 December to 24 December 2011 A. B. suffered the following injuries:

1. On the right part of the frontal area, at the level of the frontal protuberances, about 1x1cm in diameter, the skin is slightly bruised, of bluish purple colour.
2. In the right under-eye and zygomatic area, about 4x2cm in diameter, the skin is slightly swollen and pale bluish.
3. In the area of the outer end of the left eyebrow and the outer corner of the left eyelid opening and the outer half of the lower eyelid of the left eye, about 5x3cm in diameter, the skin is bruised, of pale greenish-yellow colour.
4. On the inside of the left ear, in diameter about 2.5 x2cm, and in the area behind the left ear, about 3x2cm in diameter, the skin is bruised, purple greenish and yellow in spots. The left earlobe is slightly swollen. The skin in the inner part of the left ear is stained with dark red dried content, and in the outer ear canal there is a roll of paper, whose visible part is partly soiled with a dry scarlet substance; during the examination this paper roll was not removed.
5. The skin is intensely blue-purple, bruised, swollen, and firmer to palpation on both sides of the back, slightly more intensive on the left half, covering suprascapular, subscapular and central dorsal area. In the continuity with this area, the skin is bruised, greenish purple, lightly swollen in both supraclavicular areas, and the top and front sides of the shoulders, both supraclavicular areas in the outer and central thirds, and the left clavicular and subclavicular area, in the outer part. In the continuity with the previously described changes in the area of the left shoulder, the skin is intensely bruised, bluish purple, swollen, firmer to palpation, covering almost the entire surface of the left arm, with the exception of armpit and upper part of the inner side, and the lower third of its front side. In the continuity with the previously described changes, covering the inside of the left elbow, the skin is intensely bruised, bluish purple, swollen, firmer to palpation. In the continuity with the previously described changes in the area of the right shoulder, covering the right upper arm - its back and outer side, and to the lower extent, the lower part towards the back, along the entire length of the upper arm to the outside of the right elbow, the skin is intensely bruised, bluish purple, swollen, firmer to palpation.
6. The skin is bruised and bluish purple, about 22x13 cm in diameter, in the area of the left forearm, on the back of the hand, on the upper and central thirds, and covering also its palmar side, in the elbow half.
7. The skin is bruised and bluish purple, about 13x5 cm in diameter, in the central part of the right lateral chest area, in the round shape.

8. The skin of the lower half of the left lateral thoracic region and of the upper left abdominal area is bruised on the surface of two male hands, bluish purple, and on this same surface, in three places, approximately parallel, transversely striped, in the diameter of approximately 6x2cm in two places, and in one place below that in the diameter of about 5x3cm, the skin is more intensively bruised, of blue purple colour.
9. The skin is bruised, blue purple in the left area of buttocks, centrally, striped, horizontally, in the diameter of about 14x5 cm, slightly wider in the region of the left hip. The skin is bruised, blue purple in the right area of buttocks, in the inner half, at the same level as described above, transversely striped, about 6x2cm in diameter.
10. The skin on the back of the left thigh, in the upper third, laterally, transversely striped, about 5x1cm in diameter, is bruised, pale bluish.
11. The skin on the back of the left thigh, in the central third, inwards, is bruised, bluish purple, in irregularly oval shape, about 6x4cm in diameter.
12. The skin is bruised on the back of the left thigh, in the lower third, the central area and laterally, in irregularly oval shape, about 7x2cm in diameter, partly spread, bluish purple.
13. The skin is bruised, bluish purple on the back of the right thigh, in the central third, at the same level as the injury in the left upper thigh, described under point 11, in irregularly oval shape, in the diameter of about 20x8cm.
14. The skin is bruised, bluish purple on the back of the right lower leg, just below the leg pit, about 6x2cm in diameter.
15. The skin is bruised, bluish purple on the back of the right leg, in the area where the upper and the central thirds meet, in the oval shape, in the diameter of about 16x12cm.
16. Having examined the mucous membrane of the lips and gums and the conjunctiva no injuries were identified, and except the above described ones, no other external injuries were identified.

Giving his opinion regarding the mechanism of injuries, the Associate Professor Đorđe Alimpijević, MD, said that the injuries were inflicted upon A.B. at two separate occasions: before the first medical examination performed by the prison doctor on 22 December 2011 and after the follow-up examination performed by this doctor on 23 December 2011. This conclusion is also based on the number and scope of identified existing injuries compared to the injuries from the medical findings of 22 December 2011, as well as the appearance and colour of some injuries, especially the colour of bruises in the shoulder and supraclavicular areas - the key areas for comparing the colour of other bruises.

The appearance and type of injuries suggest that they could occur as a result of repeated use of blunt mechanical instruments, possibly a rubber baton, and that subsequently, due to the diffusion and the progress of healing process, the appearance of injuries could change.

The injury in the area of the left ear and the back of the left ear, which may have resulted in the injury of the tympanic membrane, could be caused by at least one thump that affected the wider area, possible by using open hands or back of the hand over the left ear. If it is established that these injuries caused the rupture of the tympanic membrane, it will constitute a serious bodily injury.

Other injuries in the area of the face could have been caused by the multiple use of a blunt mechanical instrument, possibly fist blows.

The appearance, position, location and other characteristics of the recorded injuries in the area of the trunk, upper and lower limbs, suggest that they could occur in the posture described by A. B.

The prison doctor said that the injuries existing on the day of the visit of the expert team were several times larger than the injuries he observed during the examination performed on 22 December 2011, which he described in his medical report made on that day.

Based on the findings of the Associate Professor Đorđe Alimpijević, MD, the report of the prison doctor dated 22 December 2011, as well as his aforescribed statement, the Protector of Citizens concluded that the number and severity of injuries sustained by A. B. undoubtedly pointed to the fact that after 22 December 2011, when the use of means of coercion - physical force and rubber batons was recorded, he was again subjected to physical harm after completion of medical examination on 23 December 2011.

The type and method of harming A. B. undoubtedly lead to the conclusion that during the infliction of bodily injury a rubber baton was used, and that the injuries were inflicted by the members of the Security Service. According to all previously established facts, the A. B.'s allegation that he sustained injuries on 24 December 2011 was assumed to be true.

Based on the statements given by the Governor of the Institute and the prison doctor and the examination of official records, the Protector of Citizens found that the A.B.'s bodily injuries inflicted on 24 December 2011 were not recorded in the official records, that the Governor of the Institute was not informed thereof and that on that occasion A. B. was not taken to a medical examination.

Article 25 of the Constitution of the Republic of Serbia (*Official Gazette of RS*, No. 98/2006) provides that physical and mental integrity is inviolable, while Article 28 prescribes that persons deprived of liberty must be treated humanely and with respect to dignity of their person.

Article 127 paragraph 2 of the Law on the Execution of Criminal Sanctions (*Official Gazette of RS*, Nos 85/05, 72/09 and 31/11) stipulates that in order to maintain good order and discipline in the institution only such measures may be applied against a prisoner as set forth by this Law and regulations enacted thereupon, and only to the extent necessary. Article 130 of the same Law prescribes that a medical examination of the prisoner is mandatory after use of coercive measure against him, except for the measure of tying, and a two more follow-up medical examinations shall be carried out in further 24 hours, in equal time intervals. A written report by the Security Service as well as reports on medical examinations carried out shall be promptly forwarded to the Governor of the Penal Institution. The report by a medical doctor shall also contain a statement of the person against whom a coercive measure was enforced about how the injuries were caused, including an opinion of the medical doctor about the link between the measure applied and the injuries caused. The Governor of the Penal Institution shall notify the Head of the Directorate on use of coercive measures and forward reports within 24 hours as of the time the coercive measure was used.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*Official Journal of SFRY* - International treaties, No. 9/91 of 2 August 1991) defines "torture" as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 2 of the aforementioned Convention envisages that each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Articles 12, 13 and 14 of the Convention provide that each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is a reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. Each State Party shall ensure that any individual who alleges that he/she has been subjected to torture in any territory under its jurisdiction has the right to complain to the competent authorities of the State that will investigate the case promptly and objectively.

Article 64.1 of the European Prison Rules provide that prison staff shall not use force against prisoners except in self-defence or in cases of attempted escape or active or passive physical resistance to a lawful order and always as a last resort.

**All competent authorities are obliged to adhere to the Constitution, laws and international rules and regulations in their work and to fully enable the persons serving a prison sentence to exercise the rights they are entitled to. Any different treatment, regardless of the reasons guiding the concerned authority, leads to a direct violation of the rights and constitutes the ground for establishing the responsibility of the competent authority.**

**The infliction of bodily injuries upon the convicted A. B. by the members of the Security Service on 24 December 2011 in the Pavilion VII of the Penitentiary-Correctional Institute Požarevac – Zabela is an act of torture and violation of mental and physical integrity of the person deprived of liberty.**

**The fact that the bodily injuries inflicted upon A. B. were not recorded in the official files and that the Governor of the Institute was not informed thereof, represents an unlawful and irregular procedure. Besides, the A. B.'s right to health care was violated because he was not taken to a medical examination after being injured.**

**In order to rectify all identified errors in work, the Penitentiary-Correctional Institute Požarevac – Zabela will take all available measures in order to establish the responsibility of the institute officials for violence used against A. B. on 24 December 2011, and for the failure to record the inflicted bodily injuries, to notify the Governor of the Institute and to take A. B. to a medical examination.**

**In order to prevent the re-occurrence of torture or any other form of abuse in the Institute, the Penitentiary-Correctional Institute Požarevac – Zabela will take all available measures of protection, which will enable all persons deprived of liberty to exercise the right to inviolability of their mental and physical integrity.**

**In its future work, the Penitentiary-Correctional Institute Požarevac – Zabela will record each individual occurrence of bodily injury inflicted upon persons deprived of liberty and promptly inform the Governor of the Institute thereof, and take an injured person immediately to a medical examination.**

Having established all the relevant facts, the Protector of Citizens, by applying Article 31 paragraph 2 of the Law on the Protector of Citizens, has identified the errors in work and has given the recommendation to the Penitentiary-Correctional Institute Požarevac – Zabela.

## DEPUTY PROTECTOR OF CITIZENS

Miloš Janković