



REPUBLIC OF SERBIA
PROTECTOR OF CITIZENS

286-98/17

Belgrade

MA



Заштитник грађана
Zaštitnik građana

reg. no. 42625 Date: November 20, 2017

In accordance with Article 2a of the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Official Gazette of Serbia and Montenegro – International treaties”, no. 16/05 and 2/06 and “Official Gazette of the Republic of Serbia – International treaties”, no. 7/11) and Article 19, paragraph 1, item (c) of the Optional Protocol, the Protector of Citizens, acting in the capacity of the National Preventive Mechanism against Torture, submits the Ministry of Interior the following

INITIATIVE

for the regulation of the use of the means of coercion

It is necessary to adopt the regulations which would provide more detailed characteristics and use of the means of coercion, specifically their:

- 1. Technical characteristics;**
- 2. Method and subject of control of fulfillment of technical characteristics;**
- 3. Method and limitations of use;**
- 4. Documenting use;**
- 5. Procedure for evaluation of justification and correctness of use;**
- 6. Method and place of storage;**
- 7. Timeframe of regular use;**
- 8. Method of destruction;**
- 9. Timeframe to withdraw from use those which do not meet defined technical characteristics.**

Explanation

The Law on Police¹ defines the means of coercion, including among other things, restraints, police baton, pepper spray, electromagnetic devices and chemical agents. Use of the means of coercion which do not meet required safety criteria, as well as their incorrect application, may constitute abuse, and even torture. Technical characteristics of the means of coercion are not systemically defined in the Republic of Serbia, nor is their use specified in a precise way.

Any object may constitute material means which may be used for torture or any other form of abuse such as cruel, inhuman or degrading treatment or punishment. That could be a simple rock, rope, cable, stick, nylon bag or some of the objects adjusted for the needs of torture, as well as special devices for torture. Whether these are simple objects which could be used for

¹ “Official Gazette of the Republic of Serbia”, no. 6/2016.

torture or are adjusted for that purpose or particularly designed for it, they are considered as “non-standard objects” which do not belong in police stations.

In numerous reports of universal and regional international bodies,² as well as national bodies,³ it has been stated that it is completely inappropriate for such “non-standard objects” to be found in police stations, most frequently in the premises or in the vicinity of the premises where police detention and interrogations are carried out. This raises the doubt that such “non-standard objects” are used by law enforcement officials in order to intentionally inflict pain or severe physical or mental suffering in order to obtain information or confession or for the purpose of punishment, intimidation or pressure.

Unlike above stated “non-standard objects” which should not be found in certain premises of police stations, the means of coercion are lawfully permitted means used by law enforcement officials solely in line with legal authorizations, and their use and presence in police stations is completely justified.

The police uses numerous means of coercion such as restraints, police batons, stun guns, rubber bullets, pepper spray, tear gas and others. While certain means are only intended for restraining (restraints), most of them are designed to cause pain (police batons, electrical batons, stun guns, rubber bullets, pepper spray, tear gas). Stated means are usually qualified as non-lethal weapons, i.e. as less dangerous means compared to fire arms and explosives.

However, despite previously stated qualification being generally true, in certain situations, such means may cause serious injuries, even death, which may be a consequence of different factors, even if the means are used in accordance with the instructions of the manufacturer. Thus, excessive straining of the restraints may lead to damages of extremities which were tied too tight, and even lead to a permanent damage; hits by the baton may lead to breaking of the bones, and even death; high voltage or the strength of a stun gun may lead to significant damages to the skin, heart dysfunction and death (particularly with persons with installed pacemakers); tear gas may cause serious respiratory problems, and possibly lead to blindness.

Thus, the means of coercion may be used for different types of torture. The fact that such means are legal, in constant use by law enforcement officials, but may be used for torture, precisely due to the characteristic that they are designed primarily to inflict pain, shows to the need to pay special attention to their correct use and to avoid unwanted consequences of their use.

This primarily refers to establishing of the standards which will set detailed technical conditions stated means must meet, which is currently not the situation in the legal system of the Republic of Serbia. Current regulations do not define or do not define in appropriate way the series of characteristics of the means relevant for the issue of protection against occurrence of excessive injuries due to their use, for example: to which extent the restraints may be tied and sharpness of their edges; firmness of the police baton and the shape of its tip; electric voltage and power of electric baton and stun gun, as well as limits of duration of certain activations; firmness and shape of a rubber bullet; quantity, chemical composition and

² For example see the Report for the Government of the Republic of Serbia on the visit of the European Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on November 26, 2015, item 15.

³ For example see the Report of the NPM on the visit to the Police Administration in the City of Belgrade no. 71-71/13 of December 30, 2013, page 42 and 43; the same, Report of NPM on the visit to the Police Administration in Pancevo no. 71-7/13 of April 24, 2013, page 15.

concentration of tear gas and pepper spray; strength used for discharge of water streams and temperature of used water.

Use of the means of coercion which due to their inappropriate (excessive or harmful) characteristics or changed (due to time lapse or method of storage) characteristics inflict excessive pain i.e. cause unnecessary injuries, permanent damages or death, constitutes torture of the persons towards whom those means are used.

* * *

Examining whether and which standards on technical characteristics are used by the Ministry of Interior during application of the means of coercion, which act these standards are defined by, which institution and in which manner performs control of fulfillment of technical characteristics and whether the act on compliance is issued, whether appropriate storage is defined, as well as recording and destruction of these means, whether the methods for use and reporting on the use are defined, including training of law enforcement officials on use of the means of coercion, in line with Article 21, paragraph 1 of the Law on the Protector of Citizens ("Official Gazette of the Republic of Serbia", no. 79/2005 and 54/2007), the Protector of Citizens sent the letter no. 285-57/16 reg. no. 2774 on July 20, 2016 to the Ministry of Interior asking the data about all above stated.

In the response of the Ministry of Interior – Police Directorate – Police Administration, no. 214-2584/16-1 of August 5, 2016, it is stated that the Ministry of Interior complies with established and achieved standards, taking into consideration generally accepted standards when procuring the equipment and requires from the bidders to supply relevant certificates of accredited laboratories that the effects of pepper spray for short-term use do not leave any consequences for psychological or physical or general health, which also applies to procurement of stun guns and chemical agents; that technical characteristics of the means of coercion are defined by the Rulebook on technical characteristics and method for use of the means of coercion ("Official Gazette of the Republic of Serbia", no. 19/07, 112/08 and 115/14) and user manuals supplied by the manufacturers; that accredited laboratories, after comparing the samples of the equipment with defined standards, issue certificates on fulfillment of required technical characteristics; that the Instruction on the method for keeping records of arms, ammunition and equipment with the work methodology on the program system "NAO" adopted by the Minister of Interior (01 strictly confidential no. 257/13-8 of October 16, 2013) defines the method and place for storage and recoding of equipment; that the Law on Police, the Rulebook on technical characteristics and method for use of the means of coercion and the Mandatory instruction on the method of reporting and evaluation of justification and correctness of use of the means of coercion (July 2007) and amendments to the Instruction (July 2013) define the method and limitation of use, recoding of use and reporting on the use of the means of coercion; that the training of law enforcement officials is defined by the Program for professional development of the law enforcement officials of the Ministry of Interior for 2016 rendered by the Minister of Interior (01 no. 11347/15-8 of February 22, 2016) and which is rendered each year and that the Ministry is not aware whether the equipment has been destroyed so far, and that all the equipment no longer suitable for use, or with passed expiration date, is located in the storages for arms and equipment.

* * *

Article 25 of the Constitution of the Republic of Serbia⁴ stipulates that physical and mental integrity is inviolable and that nobody may be subjected to torture, inhuman or degrading treatment or punishment.

Article 32 of the Law on Police stipulates that policing shall be based on the principles of professionalism, depoliticization, cooperation, cost-effectiveness and efficiency, legality of work and proportionality in the use of police powers, as well as other principles regulating the activities of public administration authorities, and of civil servants, and the procedure in administrative matters. In the performance of police duties, only those measures and means of coercion may be applied that are specified by law and that provide the result without any or with the minimum of harmful consequences for the persons subjected to such measures.

Article 64, paragraph 1 of the Law on Police stipulates in the performance of police duties, law enforcement officials in the status of authorized officials shall exercise police powers, and in item 15, paragraph 2 of the same Article, among other things, police powers include use of the means of coercion.

Article 65 of the Law on Police defines that before exercising police powers, a law enforcement official shall ascertain that all legal requirements are met for such exercise of powers and shall be accountable for such assessment, and that in exercising police powers, the law enforcement official shall act in accordance with the law and other regulations and shall abide by the standards laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the European Code of Police Ethics and other international acts relating to the Police.

Article 67, paragraph 2 of the Law on Police stipulates that in exercising police powers, a law enforcement official shall act humanely and respect the dignity, reputation and honor of each person and other human and minority rights and freedoms of citizens, giving priority to the rights of the endangered person over equal rights of the person who is violating such rights, and shall be mindful of the rights of third persons.

Article 68 of the Law on Police stipulates that the exercise of police powers shall be proportionate to the need for which they are used, that the use of police powers may not cause greater harmful consequences than those that would occur if such powers were not used, that among a number of police powers, the one enabling the performance of the task with the least harm and delay will be used, as well as that when applying the means of coercion, attempt shall be made to use them gradually, from less to more severe, and always with the least possible force.

Article 105, paragraph 1 of the Law on Police stipulates that along with other means of coercion (e.g. physical force and fire arms), the Police also uses pepper spray, stun guns, police baton, restraining devices and chemical agents. Paragraph 2 stipulates that a law enforcement official shall apply means of coercion only when otherwise unable to carry out his duty, with due restraint, and in proportion to the danger threatening the legally protected goods and value, and the gravity of the offense being prevented or combated. Paragraph 3 stipulates that a law enforcement official shall always use the most lenient means of coercion enabling him to achieve a legitimate goal, in proportion to the reason for such use and in a manner enabling performance of duty without unnecessary detrimental consequences. Paragraph 5 stipulates

⁴ "Official Gazette of the Republic of Serbia", no. 98/06.

that when using the means of coercion, law enforcement officials are obligated to safeguard human lives, ensure the least possible injury and material damage and make sure that persons injured or threatened with injury receive aid as soon as possible and that their closest persons be notified without delay. Paragraph 6 stipulates that Law enforcement officials shall undergo training on the use of means of coercion, organized by the Ministry.

Article 108 of the Law on Police stipulates that reporting, control and responsibility are related with use of the coercion means, and that a law enforcement official shall submit a written report to the superior law enforcement official on any use of the means of coercion promptly and no later than 24 hours after the use of means of coercion, as well as that the report shall contain data on the means of coercion used, the person against whom they were used, the reasons and grounds for their use, and other facts and circumstances of importance for assessing the justifiability and appropriateness of the use of the means of coercion. The justifiability and appropriateness of the use of the means of coercion shall be assessed by an authorized law enforcement official or a commission proposes undertaking of legally defines measures to the head of the organizational unit. The data on the number of cases of use of means of coercion, classified by type, and the data on the number of cases of unjustified or inappropriate use of means of coercion and measures taken in that connection, shall be an integral part of the annual report of the Ministry and are available to the public.

Article 111 of the Law on Police stipulates that pepper spray may be used to repel an attack or subdue active resistance of a person, as well as that the use of pepper spray means use of spray doses filled with tear gas or a chemical agent of weaker effect than tear gas and/or a special purpose substance with a repugnant smell.

Article 112 of the Law on Police stipulates that electromagnetic means may be used to repel an attack or subdue active resistance of a person, as well as that the use of electromagnetic means, means use of stun guns and electric batons, which emit a short-duration electromagnetic pulse.

Article 113 of the Law on Police stipulates that a police baton may be used to repel an attack or subdue resistance of a person, if the use of physical force is unsuccessful or a legitimate goal cannot be achieved, that the use of a police baton means punching or applying combat wrestling on a person's body, as well as that a police baton shall not be used in the area of the head, neck, spinal column, chest, stomach, genitals and joints, unless such strokes are absolutely necessary in order to protect life and body.

Article 114 of the Law on Police stipulates that restraints may be used to prevent attack, resistance, escape or self-harm, that, as a rule, use of restraints means tying a person's hands, either in front or behind the back, and that the legs may also be tied in case restraining of the arms does not achieve the purpose, as well as the obligation of the law enforcement official to use the restraints so that it does not inflict unnecessary bodily pain or injuries to the restrained person.

Article 122, paragraph 1 of the Law on Police stipulates that chemical agents may be used to repel an attack and subdue resistance if that cannot be achieved by physical force and police baton, to restore public order, to force a person to leave an enclosed space, in resolving hostage situations, and in cases where conditions have been met for the use of special types of weapons and explosive devices or for the use of firearms, as established by this law. Paragraph 2 stipulates that use of chemical agents means use of short-term effect tear gas and chemical agents with milder effect, whose effect until it lasts causes no consequences for psycho-physical and general health. Paragraph 3 stipulates that when using chemical agents in the

vicinity of children's institutions and senior citizens' homes, hospitals, primary schools, busy roads and highly inflammable substances, special protective measures shall be taken. Paragraph 4 stipulates that chemical agents shall not be used against persons near explosive or inflammable substances, at great heights, and in similar locations where human life could be endangered. Paragraph 5 stipulates that the decision to use chemical agents shall be made by the manager who directly manages engaged forces in accordance with the plan, and if there is no plan, the consent of the Police Director must be obtained.

Article 3 of the Code of Police Ethics⁵ stipulates that the law enforcement officials shall protect and respect human and minority rights and freedoms, keep public order and peace and implement the law, fight against all types of crime, provide assistance and serve the citizens and the community in accordance with the Constitution, law and international standards. Also, this Article stipulates that in case of legal limitation of human and minority rights the law enforcement officials shall proceed with respect for dignity, reputation and honor of each individual and other fundamental human rights and freedoms, and that during police actions they shall give advantage to preventive compared to repressive actions.

Article 14 of the Code of Police Ethics stipulates that law enforcement officials in the Ministry accept the following standards of actions: duty to serve the citizens and the community, responding to the needs and expectations of the citizens, respect of legality and prevention of unlawful actions, exercising human and minority rights and freedoms, non-discrimination in performance of police assignments, proportionality in use of the means of coercion, prohibition of torture, and use of inhuman or degrading treatment, provision of help for the victims, compliance with professional behavior and integrity, obligation to protect secret data and obligation to refuse unlawful orders and report corruption.

Article 4, paragraph 2 of the Law on Environmental Protection⁶ stipulates the obligation of the Republic of Serbia to keep and improve the environment within its authorizations as the subject of the system for environmental protection, and Article 5 stipulates the responsibility for every activity which changes or may change the situation or conditions in the environment, i.e. for failure to undertake the measures for environmental protection.

* * *

Article 5 of the Universal Declaration on Human Rights⁷ stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7 of the International Covenant on Civil and Political Rights⁸ stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 2, paragraph 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁹ stipulates that each State Party shall take effective

⁵ "Official Gazette of the Republic of Serbia", no. 17/17.

⁶ "Official Gazette of the Republic of Serbia", no. 135/04, 36/09, 36/09 – other law, 72/09 – other law, 43/11 – decision of CC and 14/16.

⁷ Adopted by the Resolution of the General Assembly of UN no. 217 (III) of December 10, 1948.

⁸ Ratified by the Law published in the "Official Gazette of the Socialist Federal Republic of Yugoslavia", no. 7/71.

⁹ Ratified by the Law published in the "Official Gazette of the Socialist Federal Republic of Yugoslavia – International treaties", no. 9/91.

legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, and that each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 1 of the Code of Conduct of the Persons Responsible for Application of the Law¹⁰ stipulates that the persons responsible for application of the law shall always perform the assignments imposed by the law by serving the community and protecting all persons from unlawful activities, in line with high level of responsibility required by their profession.

Article 3 of the Code of Conduct of the Persons Responsible for Application of the Law stipulates that the persons responsible for application of the law may use force only if really necessary and to the extent required for performing of their duty.

Article 5 of the Code of Conduct of the Persons Responsible for Application of the Law stipulates that none of the persons responsible for application of the law may apply, encourage or allow torture or some other cruel, inhuman or degrading punishment or action.

Article 1 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials¹¹ stipulates that governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials, and in developing such rules and regulations, governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

Article 2 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stipulates that the governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

¹⁰ Adopted by the Resolution of the General Assembly of the UN no. 34/169 of December 17, 1979.

¹¹ Adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Republic of Cuba, in the period from August 27 until September 7, 1990.

Article 5, items a) and b) of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stipulates that whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved and minimize damage and injury, and respect and preserve human life;

Article 19 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stipulates that the governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms¹² stipulates that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 29 of the European Code of Police Ethics¹³ stipulates practical training on the use of force and limits with regard to established human rights principles, notably the European Convention on Human Rights and its case-law, shall be included in police training at all levels.

Article 36 of the European Code of Police Ethics stipulates that the police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances.

Article 37 of the European Code of Police Ethics stipulates that the police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective.

* * *

Statements of the manufacturers of the means or the bidders in the public procurement procedure, that the use of certain means of coercion in accordance with given user's manual does not leave any consequences on physical, mental or general health condition of the persons subjected to these means does not constitute reliable basis for the conclusion that the use of these means will not lead to occurrence of unwanted consequences. Numerous technical devices, chemical agents, as well as all the medicines, although being less dangerous in its essence and not having the goal of inflicting pain, regardless of the declaration of the manufacturer and in line with the current regulations must be attested, i.e. approved before sale and use. The above stated is under assumption of the existence of technical standards those means need to fulfill, as well as existence of regulations defining the contents and procedure of control of fulfillment of technical characteristics and the subject authorized to perform that control, and to issue acts on fulfillment of characteristics.

Neither the Law on Police nor the Rulebook on technical characteristics and method for use of the means of coercion (hereinafter referred to as the Rulebook) provide technical standards of the means of coercion to the extent to secure that their application does not leave unwanted consequences for the persons subjected to them, but only some of their characteristics. Thus, the Law on Police mentions a chemical agent of weaker effect than tear gas and/or a special

¹² Ratified by the Law published in the "Official Gazette of Serbia and Montenegro – International treaties", no. 9/03, 5/05 and 7/05 – corr. and "Official Gazette of the Republic of Serbia – International treaties", no. 12/10 and 10/15.

¹³ Recommendation of the Committee of Ministers of the Council of Europe to the Member States no. (2001) 10 of September 19, 2001.

purpose substance with a repugnant smell, without specifying which is that substance with weaker effect or chemical contents of that substance. The Law also stipulates the use of stun guns and electric batons which emit a short-duration electromagnetic pulse, but without, for example, specifying the measuring unit of that pulse. Furthermore, Article 5 of the Rulebook stipulates that the police baton is made out of the mix of natural and artificial caoutchouc, and that there is a metal bar inside of its securing required firmness and resistance during use and that its weight is 625 g, length 560 mm and with the diameter of 30 mm. On one hand, instead of setting upper and lower limit values, the weight is unnecessarily set to the gram, i.e. the length and the diameter to the millimeter, but on the other hand the firmness of the baton is not set, but the expression “required firmness and resistance” is used, without any explanation or measuring value. The similar situation applies to official handcuffs which are referred to in the same Article specifying their technical characteristics as being made of metal and with the weight of 240 g, as well as for the chemical agents, stipulating that they consist of specified chemical substance, not stating precisely which chemical substance it is.

Along with above stated, no other characteristics of the pepper spray or electromagnetic devices are specified, which is the consequence of unsynchronized regulations, i.e. the fact that the current Rulebook, which is applied until adoption of the new one, was adopted on the basis of the previous Law on Police¹⁴ which did not envision these means. Although Article 108 of the current Law on Police stipulates that more detailed characteristics of the means of coercion, the manner of their use, the procedure for assessing justifiability and appropriateness of their use, control and record keeping shall be prescribed by the Minister, and Article 251 of the Law stipulates that the secondary legislation referred to in the Law shall be adopted within one year from the date of entry into force of this Law¹⁵, this regulation has not been adopted, therefore more detailed characteristics of the means of coercion have not been defined.

Furthermore, uses of the means of coercion, such as chemical agents, e.g. tear gas and pepper spray, which have expired or restraints – official handcuffs which have been damaged due to frequent use – worn down, corrosion etc. is damaging for the health of an individual towards whom these means are applied. Due to the danger for the means of coercion to change their characteristic with the lapse of time, use or due to external influences, along with defining technical characteristics, it is also necessary, having in mind those characteristics, to define time period for regular use of the means of coercion, as well as the method and place for storage and recoding of the supplies of the means of coercion.

Also, having in mind the need for environmental protection, it is necessary to also regulate the method and place of destruction, as well as recording of destruction of the means of coercion. Along with the need for environmental protection, the means withdrawn from use should be destroyed and for the prevention of later abuse which would be caused by the use of such means.

In order to secure protection against abuse, it is necessary to define the method and limitation for use of all the means of coercion and establish efficient systems of control for the use of the means of coercion. Among other things, it is necessary to define on which body part of a person certain means of coercion could be applied and with what intensity and set the duration of the effects on a certain body party, in order to avoid unwanted consequences of their use. Furthermore, it is necessary to exclude certain categories of individuals from the possibility, expect in particular circumstances, to be subjected to these means, including

¹⁴ “Official Gazette of the Republic of Serbia”, no. 101/05, 63/09 – CC, 92/11 and 64/15.

¹⁵ This deadline expired on February 5, 2017.

visibly ill individuals, persons with disabilities or young or senior citizens. Also, having in mind that the incorrect and excessive use of the means of coercion is often difficult to establish, it is necessary to establish precise records of the use of such means. The records should include the data on the reasons and the conditions under which those means were used, which milder means were used prior to that and which are the consequences of the use these mean, particularly in respect of occurrence of physical injuries, as well as written statement of the individuals about circumstances related with the use of the means of coercion and which possible injuries were inflicted.

It is necessary to organize systemic training sessions for the law enforcement officials authorized to use means of coercion about the characteristics of certain means, rules for handling them, method and limitations for the use of the means of coercion, unwanted consequences, as well as recording and reporting on the use, in accordance with the plans which define the contents and the method of training. These trainings are one of the preconditions for the correct use of the means of coercion, in accordance with their technical characteristics and instructions for use, as well as that the individual subjected to certain means will not suffer excessive and disproportionate pain or other consequences caused by incorrect used.

Considering the fact that the law enforcement officials currently use the means of coercion without previously defined technical standards to be met by those means, the opinion of the Protector Of Citizens is that until defining of these standards, the means of coercion should not be procured, and after the standards are defined, the time period should be set for removal from use and destruction of the means of coercion currently used by the law enforcement officials or those currently in stock, and which do not meet defined technical characteristics.

* * *

Performing the activities of the National Mechanism for the Prevention of Torture, the Protector of Citizens has established that there is no systemic definition of technical characteristics and the method for use of the means of coercion, such as restraints, police batons, electric baton, stun guns, rubber bullets, pepper spray, tear gas etc.

Incorrect use of the described means may lead to abuse. Also, the abuse may be caused by inadequate or altered characteristics of the used means.

By not setting or not setting in an appropriate way series of technical characteristics of the means of coercion and the method for their use, there is an increased possibility of occurrence of the violations of the rights of citizens to inviolability of physical and psychological integrity.

For above stated reasons, performing the activities of the National Mechanism for Prevention of Torture, the Protector of Citizens directs the initiative to the Government for adoption of the regulations which would regulate these issues.

In order to secure correct use of the means of coercion designed to inflict pain, but without leaving mental and physical consequences for the individual subjected to them and without causing unnecessary injuries due to their inadequate or changed technical characteristics, it is necessary to undertake required activities in order to adopt the regulations without delay which would regulate technical characteristics of the means of coercion,¹⁶ method and the

¹⁶ Construction, contents, measuring units and limit value etc.

subject of control of fulfillment of technical characteristics,¹⁷ method and place of their storage and time period for regular use of the means of coercion.

In order to preserve environment and fulfill the responsibilities towards the situation and conditions in environment, as well as prevent abuse of the means of coercion which could no longer be used, it is necessary to also regulate the method of destruction of the means of coercion.

Since the means of coercion currently in use do not have defined technical standards to be met by those means of coercion, including the procedure for the control of fulfillment of those characteristics, new means of coercion should be procured only after defining of the above stated, and the means which do not meet those technical characteristics should be removed from use.

Method and limitations for use of all means of coercion should be precisely regulated, and for the purpose of correct and lawful use of the means of coercion, all authorized law enforcement officials should undergo systemic training on handling and use of these means. Furthermore, efficient system of documenting and reporting on the use of the means should be established and the procedure for evaluation of correctness and lawfulness of each use should be regulated.

DEPUTY PROTECTOR OF CITIZENS

Milos Jankovic

¹⁷ Jurisdiction, contents and course of procedure, act on fulfillment of technical characteristics etc.