



REPUBLIC OF CROATIA
Ombudsman

REPORT ON THE PERFORMANCE
OF ACTIVITIES OF
THE NATIONAL PREVENTIVE MECHANISM
FOR 2016

Publisher

Office of the Ombudswoman, Trg hrvatskih velikana 6, 10 000 Zagreb, Croatia

For the publisher

Lora Vidović

Editorial board

Maja Kević, Ira Bedrač, Ksenija Bauer, Ivana Buljan Ajelić, Snježana Stanić, Anica Tomšić Stojkowska, Melanija Kopic, Igor Lekić

Graphic design and print

Tamposit, Nedelišće

Translation

Ad Hoc, Zagreb

Edition

180 copies

Printed in November 2017

ISSN: 1847-4616

CONTENTS

- I. PERSONS DEPRIVED OF THEIR LIBERTY AND THE FUNCTIONING OF THE NATIONAL PREVENTIVE MECHANISM ----- 7
 - 1. PRISON SYSTEM----- 7
 - 1.1. *Complaints filed by persons deprived of their liberty who are in the prison system* ----- 7
 - 1.2. *Performing NPM tasks in the prison system*-----11
 - 1.3. *Assessment of state in the prison system* -----21
 - 2. POLICE SYSTEM -----24
 - 2.1. *Protection of citizens' rights, including persons deprived of their liberty, in treatment by the police* --24
 - 2.2. *Visits to police stations and detention units*-----27
 - 2.3. *Assessment of the state of respect of rights of persons deprived of their liberty in the police system* -30
 - 3. PERSONS WITH MENTAL DISORDERS WHOSE FREEDOM OF MOVEMENT HAS BEEN LIMITED-----31
 - 4. HOMES FOR THE ELDERLY AND DISABLED-----35
 - 5. APPLICANTS FOR INTERNATIONAL PROTECTION AND IRREGULAR MIGRANTS -----37
 - 6. INTERNATIONAL COOPERATION AND CAPACITIES FOR PERFORMING NPM TASKS-----48
- II. RECOMMENDATIONS:----- 49
- III. CONCLUSION ----- 52

Dear readers,

in front of you is the Report on the Performance of Activities of the National Preventive Mechanism for 2016, prepared with the goal to contribute to the prevention of torture and other cruel, inhuman or degrading treatment or punishment in Croatia. It is an analysis of the state of human rights of persons deprived of their liberty and those who are not allowed to leave a facility under public supervision on their own accord.

Just as in each Report, since we began performing the activities of the National Preventive Mechanism (NPM) in 2012, the analysis is based on our work in individual complaints as well as preventive visits. In 2016 we worked on 497 cases and conducted 32 visits.

The Report includes the prison and the police system, psychiatric and social care institutions as well as protection of rights of applicants for international protection and irregular migrants. It also includes recommendations to the authorities, aimed at strengthening the protection of human rights of the persons deprived of their liberty, as well as the overview of NPM activities.

I am glad to say we found no treatment or conditions that could represent torture, however we have found those that could represent degrading, or even inhuman treatment, as well as violation of constitutional and legal rights. The shortcomings are mostly caused by flawed normative framework, inconsistent treatment, failure to comply with the standards, lack of financial and human resources and lack of education on human rights among employees of the facilities under the NPM authorities.

The situation within the prison system has not changed significantly in 2016. One of the biggest concerns is still caused by the fact that the healthcare of prisoners is organized within the Ministry of Justice, not as part of the public healthcare system, which puts prisoners in an unequal position compared to the general public. On the other hand, the overcrowding has continued to be reduced, but still remains a problem within some prisons, reaching as much as 132,5% of their capacities.

Police treatment is still one of the most common reasons for citizens' complaints, especially for situations that include the use of force and result in deprivation of liberty, and those have been filed by the elderly as well. The situation makes the lack of sufficient civil policing oversight, which has still not been established, even more worrying.

Even though there have been some improvements in 2016, the persons with mental disorders are still sometimes placed in unacceptable conditions. In addition, they are sometimes deprived of their liberty longer than necessary because of the duration of the decision-making procedure for terminating involuntary hospitalization, and insufficiently precise legal regulations. A significant problem is the fact that a certain number of people are still placed in a psychiatric institution, even though they are no longer in need of hospital care, but of social services, which are not provided to them.

We have found degrading treatment and violations of constitutional and legal rights in homes for the elderly and disabled as well, including situations when a person has been placed in the home without giving explicit consent, or when their privacy has not been respected. The long-term care system is insufficiently staffed, which is directly connected to the quality of the services.

In only one year, the number of applicants for international protection in Croatia has increased by 957%. It was not followed by the adequate increase of capacities within the Ministry of Interior, which has prolonged the time necessary for the decision to be reached and caused the rise in the number of unresolved applications. We have found a number of problems faced by the applicants for international protection and irregular migrants, including the unclear criteria for the restriction of movement or those caused by the organization of healthcare. We have also acted on complaints regarding returns of several hundred persons to Serbia without applying the individual process, who also claimed the police officers beat them and confiscated their personal belongings. The Ministry of Interior denied the allegations, and we have recommended prompt initiation of an effective investigation, in order to prevent the treatment that may represent violation of Article 3 of ECHR.

The conclusions and recommendations presented in this Report are intended to be used by both experts and the general public – those working with persons deprived of their liberty, members of their families, officials within public authorities, members of the Parliament, civil society organizations, academic society, media and many others. I believe that doing so can more strongly impact not only the level of respect for human rights, but also the fight against stereotypes and prejudice in our society.

Last, but not least, the Report is intended for all those whose stronger protection of rights it advocates for – anyone who has at any point of their lives been placed in a facility under the NPM authorities, or is there at this moment.

Lora Vidović,
Ombudswoman

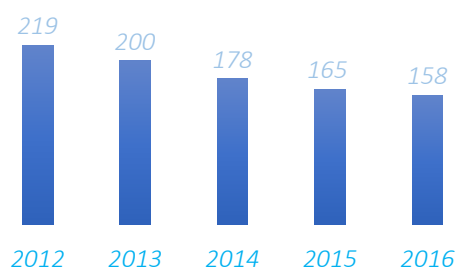


I. PERSONS DEPRIVED OF THEIR LIBERTY AND THE FUNCTIONING OF THE NATIONAL PREVENTIVE MECHANISM

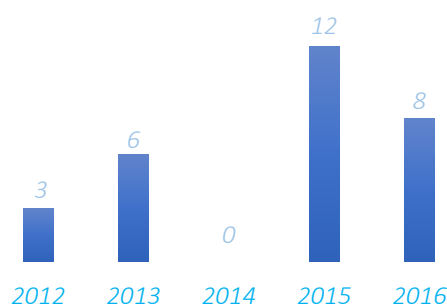
1. PRISON SYSTEM

Acting on individual complaints and making regular visits to penal institutions represent ways of protecting the rights of persons deprived of their liberty and of strengthening their protection against torture and other cruel, inhuman and degrading treatment. In 2016, we received 158 complaints, carried out 40 investigative procedures in the field and visited eight penal institutions.

NUMBER OF COMPLAINTS BY PERSONS IN THE PRISON SYSTEM



NUMBER OF NPM VISITS TO PENAL INSTITUTIONS



In 2014, the focus of NPM were persons with mental disorders, which is why we made no visits to penal institutions.

1.1. Complaints filed by persons deprived of their liberty who are in the prison system

“...The extent to which my rights are violated is something that is simply impossible to describe in words, but I will try.”

In 2016, the number of complaints continued to decrease slightly, which was expected given the trend of declining prison population rates. Persons deprived of their liberty in most cases use one complaint to report several instances of violation of different rights; nevertheless, quality of healthcare services, treatment by officers of security section and accommodation conditions are still the most common reasons for filing complaints. As in previous years, prisoners also contacted us because of the functioning of the Treatment Department for Prisoners, inefficient legal protection and possibilities of contact with the outside world.

"...I had my blood drawn twice and the doctor told me that in her opinion, I did not have hepatitis C, but even though I asked her to issue a paper confirming that I did not have hepatitis C, I have still not received any kind of confirmation and I am still not sure whether I am ill... I asked the doctor if they could employ me as an assistant cook, she told me that she would rather not put me in the kitchen because I had hepatitis C."

Reasons for filing complaints about quality of healthcare are more or less the same as in previous years. Prisoners are often only provided with emergency dental interventions, whereas other services, especially regarding dental devices, are not readily available. Certain dentists refuse to receive prisoners as their patients, which is a big problem, especially in smaller towns. Given that some penal institutions do not provide a complete set of cutlery, prisoners who have not resolved their oral problems or are missing many teeth, may experience health difficulties. Since both outpatient and inpatient physical therapy is difficult to obtain, in some cases, treatment is delayed until after the expiry of prison sentence, which may lead to patient's disability. Because of their poor knowledge of the Execution of Prison Sentence Act (EPSA), sometimes neither physicians nor prisoners are aware of the right of prisoners to request that they be examined by a specialist doctor if the penal institution physician fails to do so; however, prisoners are obligated to bear the costs of the examination on their own if the specialist establishes that the patient is healthy.

When being transported to external medical institutions, persons deprived of their liberty are situated on side benches, in the back of the special vehicle, without hand grips, often with their hands and sometimes even legs bound, with no security belt provided, which may cause injuries and additionally aggravate their health condition. Prisoners are also often dissatisfied with the organization itself of such an undertaking, since they are forced to spend hours waiting in inadequate conditions, cramped in the back part of the vehicle, until everybody has undergone the necessary check-ups. Prisoners are all the more dissatisfied if they themselves bear the costs of such undertakings, whereas the fact that such complaints have been confirmed as well-founded in the previous years, points to the need for introducing systematic and organizational changes.

When being transported to external medical institutions, persons deprived of their liberty are situated on side benches, in the back of the special vehicle, without hand grips, often with their hands and sometimes even legs bound, with no security belt provided, which may cause injuries and additionally aggravate their health condition.

Some complaints pertained to accommodation conditions. For example, investigative procedure conducted in Bjelovar County Prison revealed that a room, where seven actively employed prisoners were situated, had no sanitary facilities and that from 9:30 p.m. to 6:30 a.m., when the room was locked, the prisoners had to urinate or defecate in a bucket, which might be an example of degrading treatment. Our

recommendation was accepted, the room was adjusted and conditions therein aligned with international and legal standards.

Not all penal institutions dispose of premises for unsupervised conjugal visits (or visits of common-law partners), which is also a reason for which they file complaints, emphasizing that this additionally threatens relationships with their partners. Even though pursuant to EPSA visits of that nature constitute a benefit rather than a right, those detained in prisons in Karlovac, Dubrovnik, Sisak, Split, Varaždin and Zadar, which are not equipped with such premises, are in a less advantageous position than those detained in prisons that do have such premises. The position of prisoners on remand, who have been completely deprived of the possibility to receive such visits, is even more difficult. Hence, persons who have not yet been finally convicted and who are detained under presumption of innocence, are in a less favourable position than those who have already been convicted and whose guilt has been proven. At the same time, one should bear in mind ECHR's position in the case *Varnas v. Lithuania* (2013), according to which general differences in the treatment of prisoners on remand and other prisoners, when it comes to the possibility of receiving unsupervised conjugal visits, are not justified. As a result, the Court established that Article 14 in conjunction with Article 8 of the European Convention on Human Rights were violated. Consequently, prisoners on remand should also be provided with the possibility of receiving unsupervised conjugal visits or visits of their common-law partners. In addition, prisoners complain about very few opportunities in the domain of their employment engagement, which renders those who are poorer and who cannot find employment, more dependent on financial assistance by family members or one-off benefits received from the Social Welfare Centre.

Insulting, belittling and misuse of powers when applying means of coercion, are still among the most common reasons for filing complaints against treatment by security officers; in addition, in 2016, we acted on complaints in which prisoners point to possible inhuman or degrading treatment. Conversely, according to data provided by the Central Office of the Prison System Directorate (COPSD), throughout the year, prison system did not receive a single complaint that

Complaints about treatment by judicial police officers, submitted by prisoners to heads of penal institutions, especially those pertaining to verbal abuse, are still being insufficiently investigated, which is unacceptable and contrary to CAT recommendation.

would pertain to torture, inhuman or degrading treatment, which points either to inability to detect or tendency to trivialize modes of behaviour that may represent violation of ECHR Article 3.

Complaints about treatment by judicial police officers, submitted by prisoners to heads of penal institutions, especially those pertaining to verbal

abuse, are still being insufficiently investigated, which is unacceptable and contrary to the recommendation that the UN Committee Against Torture (CAT) addressed to the Republic of Croatia in 2014. For example, according to information available, as for the prisoner who had his ribs broken and whose lung was punctured, COPSD carried out inspection supervision two

days after the incident, but failed to establish when and how the mentioned injuries occurred. On the other hand, according to allegations made by complainants and other prisoners, injuries had been inflicted by judicial police officers during search. Considering that investigative procedure is still in progress, at this moment it is impossible to conclude whether the incident was caused by illegal action or misuse of power; however, cases such this one point to the importance of a thorough investigation.

Prisoners still complain about inefficiency of legal protection, both when it comes to the manner in which heads of prisons act on complaints and that in which executing judges act on requests for judicial protection and complaints about decisions reached by heads of prison. According to data provided by COPSD, in 2016, 56 requests for judicial protection were proved well-founded, one of which pertained to dietary conditions, others to accommodation conditions. Protection was granted to prisoners from Lepoglava State Prison (55) and Varaždin County Prison (1), whereas none of the requests for protection received by other penal institutions were found to be well-founded. The fact that in 2016, only 11 prisoners on remand filed a complaint to the head of prison, points to great mistrust regarding the efficiency of this legal remedy.

We continue to receive complaints pertaining to implementation of disciplinary proceedings. For example, after acting on complaint filed by a prisoner who decided to contact us considering that he had been groundlessly punished, it was determined that disciplinary proceedings had been initiated against him because he started running during walk around prison yard. In the notes from the hearing, it is stated that running is prohibited for the sake of personal security of other people present in the prison yard. Even though the prisoner claimed that he could not have endangered safety of other prisoners because he always visited the prison yard by himself, he was found guilty for refusing to obey a legitimate order by an authorized official. He filed a complaint against the decision to the competent executing judge, but the procedure was terminated on the grounds of expiry of limitation period. Problems occurring during implementation of disciplinary proceedings, to which we have also pointed in the Report for 2015, will not be resolved without a clearer normative regulation and continuous educational training of officials engaged in their implementation.

Even though, judging by the number of received complaints, it is possible to have an impression that violence among prisoners does not occur frequently, this problem deserves continuous and reinforced attention. Prisoners frequently claim that they are unwilling to report having fallen victim to inter-prisoner violence due to fear of revenge or shame, thus preventing timely reaction, which is something that happened in Zagreb County Prison, where none of the officials for almost two weeks realized that a prisoner on remand suffered daily abuse. In order to avoid this type of situations, all persons who work with prisoners, especially officials of the Security Department and Treatment Department for Prisoners as well as healthcare workers, must pay attention and recognize signs of violence and undertake measures aimed at ensuring

that constitutional and legal rights of all persons deprived of their liberty are respected during their stay in the penal institution.

1.2. Performing NPM tasks in the prison system

In 2016, we made unannounced visits to prisons in Zagreb, Rijeka, Varaždin, Pula and Split, as well as to Šibenik State and County Prison and state prisons in Glina and Lepoglava. Our visit to Pula County Prison was of regular nature, whereas other visits were aimed at determining the extent to which warnings and recommendations provided after the previous visits, had been implemented. In addition, we evaluated the following: the extent to which the rights of prisoners on remand are being respected in connection with their contact with the outside world, accessibility of buildings to disabled persons, and conditions under which children responsible for criminal or misdemeanour offences are deprived of their liberty. The representatives of Disability Ombudswoman Office and Ombudswoman for Children Office as well as independent experts also participated in the visits. After the visits, 13 new warnings and 77 recommendations were issued.

Healthcare

In comparison to previous years, minor positive changes have been recorded at the level of individual penal institutions, but this does not reflect the situation of the whole system.

Dental office in Zagreb County Prison has been renovated and provided with latest equipment, as well as the one in Glina State Prison, which is still closed because the Prison has not concluded an agreement with the dentist yet. Premises where dentists employed by Lepoglava State Prison work, are still in poor condition, given that no new equipment has been procured and that they work using old, worn-out machinery. If the Ministry of Justice wishes to keep this prison equipped with a dental service, it is necessary to urgently procure modern equipment and instruments.

Premises and equipment of prison infirmaries are still insufficiently aligned with minimum conditions necessary for providing healthcare services, which must be met by every healthcare institution engaged in providing healthcare to persons deprived of their liberty. In this way, prisoners are in a less favourable position than persons who have not been deprived of their liberty, when it comes to exercising one's right to healthcare.

Premises and equipment of prison infirmaries are still insufficiently aligned with minimum conditions necessary for providing healthcare services.

Due to unfilled systematized job positions, healthcare departments of penal institutions are unable to ensure that every day of the week, daily medications are distributed exclusively by healthcare workers, which is unacceptable and may harm the health of prisoners. This is something that commonly occurs in Pula County Prison, where judicial police officers distribute medications on weekends and on holidays, and the situation is similar in the Rijeka County

Prison. Besides affecting maintenance of security, unfilled systematized job positions of judicial police officers, have negative impact on the availability of healthcare services; for example, when due to lack of police officers accompanying prisoners to external medical institutions, medical tests or specialist examinations arranged in advance must be postponed.

Lack of officials also affects the quality of implementation of security measures for compulsory addiction treatment. Even though a positive step forward has been made towards intensification of activities in the Glina State Prison, if systematized job positions in the

Due to unfilled systematized job positions, healthcare departments of all penal institutions are unable to ensure that every day of the week, daily medications are distributed exclusively by healthcare workers.

Treatment Department for Prisoners remain unfilled – only 18 out of 36 positions are currently occupied – systematic treatment will remain impossible to conduct and special social-therapy department, where prisoners requiring substitution therapy are being treated, will be not be able to function.

Many penal institutions do not keep recommended auxiliary records, which would provide insight into information on how much time it takes for the prisoner to be examined after having booked an appointment with the prison doctor, dentist or psychiatrist. For example, in Pula County Prison, if a prisoner is not examined on the day of filing the application, it expires and the prisoner must file a new one, which is unacceptable, since an application for a doctor's appointment should be valid until check-up has been performed. Keeping such auxiliary records would provide information on how long prisoners have to wait for a medical check-up and it would also facilitate examination of complaints in this regard.

In some penal institutions, despite already issued recommendations and warnings, judicial police officers are still present during medical check-ups. The COPSD instruction, delivered to Zagreb County Prison following Report on NPM Visit, reveals a position according to which presence of accompanying security officers during medical check-up is completely justified, which is the reason why the Prison failed to act pursuant to NPM warning. The reasons provided therein pertain to the question of security as well as to specific nature of medical check-ups performed in an external medical institution. Nevertheless, the issued warnings pertain to check-ups performed by prison doctors in the prison infirmary. However, even though individual security assessment is the first thing that must be taken into account, it is also important to protect the prisoner's right to privacy as a patient. Therefore, it is essential to make technical adjustments to the outer side of the infirmary door or wall and enable visual supervision to judicial police officers, when this is necessary for the sake of security assessment.

During our visits to penal institutions, prisoners usually expressed considerable dissatisfaction with diet menus that did not match their health requirements. As a result, we thus analysed all menus in Pula and Rijeka County Prison. In Pula County Prison, we were provided only with information on energy values for certain meals and for the entire daily menu, which is why it was impossible to perform a more detailed analysis or examination of this issue. There is only

one “diet menu” which is not divided into sub-menus according to prisoners’ specific health conditions, such as ulcer, hypertension, liver diseases, hyperlipidaemia, which require special dietary adjustments for alleviating disease symptoms and/or maintaining normal values of relevant bodily parameters. In addition, when it comes to certain types of diet, for example diabetes diet, apart from choosing the right type and quantity of food in a meal, in most cases, it is necessary to reduce energy intake, because people suffering from diabetes are usually overweight. Pursuant to EPSA, every prison must ensure at least 3,000 kcal of daily energy intake, regardless of prisoners’ age, sex, physical activity level, i.e. the character of work that the prisoner performs, which in most cases represents excess energy intake and may cause health problems. Consequently, in 2017, NPM shall devote more attention to the problem of prisoners’ diet.

Accommodation conditions

Although prison population rates continued to decline, the situation is still unsatisfactory. According to COPSD data, on 31 December 2016, occupancy level of prison system was 80.41%, but the number of prisoners in as many as eight penal institutions exceeded their legally prescribed capacity. Thus, for example, occupancy in Karlovac County Prison was 132.50%, in Osijek County Prison 128.18% and in Dubrovnik County Prison 118.42%.

Situation is particularly bad in premises where prison sentences passed in misdemeanour proceedings are executed. Namely, given that these prison sentences are relatively short, conditions in the rooms usually do not meet international standards or national legal regulations. However, misdemeanour offenders often serve two sentences in a row, which means that the amount of time that they spend in prison without interruption, exceeds the maximum length of the penalty. For example, during our visit to Zagreb County Prison, there was a misdemeanour offender who had been in prison for 150 days and who kept his personal property items in a torn cardboard box on the floor because there was no cabinet.

In some penal institutions, for example in Zagreb County Prison and Šibenik State and County Prisons, sanitary facilities have still not been completely separated from the rest of the premises, which is why prisoners use sheets in order to protect their privacy. Walkways of most penal institutions are uncovered and on rainy days, prisoners rarely benefit from their right to spend leisure time outdoors, since they do not have adequate place where they could dry their clothes.

In most penal institutions smokers and non-smokers are detained separately, which represents an improvement with respect to previous years. However, at the Prison Hospital, smoking in rooms is a common occurrence and there are no separate rooms for smokers and non-smokers. As a result, it is impossible to protect the latter from the effects of passive smoking, while at the same time most rooms are kept locked.

Moreover, the floor, where Department for Internal Medicine, Department for Surgery, Department for Lung Diseases and special department for women are located, contains 15 rooms, only two out of which are non-smoking. In addition, instead of two hours daily, prisoners are granted one hour of outdoor time a day. Prisoners who come from other penal institutions are in a particularly unfavourable position since, due to lack of warm clothes, they are unwilling to go for a walk in cold weather, which means that they are deprived of outdoor time and that their rights are thus directly violated. Therefore, it is necessary to perform adequate architectural modifications, at the same time taking into account security requirements, in order to ensure adequate conditions for treatment and accommodation of sick prisoners. Construction of an additional annex and walkway would allow the formation of a semi-open department for accommodation of prisoners who meet the requirements thereof.

At the Prison Hospital, smoking in rooms is a common occurrence and there are no separate rooms for smokers and non-smokers. As a result, the latter are exposed to passive smoking. With most rooms being kept locked, out of a total of 15 rooms available in the Department for Internal Medicine, Department for Surgery and Department for Lung Diseases as well as in the special department for women, smoking is prohibited in only two of them.

Use of cutlery, which is an issue that we dealt with in the Report for 2015, is still inconsistent. According to data obtained from COPSD, complete sets of cutlery, as prescribed by the Ordinance on Accommodation and Dietary Standards for Prisoners, is available to prisoners detained in low and medium security conditions and in prisons in Bjelovar, Dubrovnik, Gospić, Karlovac, Osijek, Požega, Sisak, Varaždin and Zadar. In some high security correctional institutions, for example in Prison Hospital, Glina State Prison and high security section of Lepoglava State Prison, prisoners are provided only with a spoon, whereas in Šibenik State and County Prisons they get a complete set of cutlery. In prisons in Pula and Zagreb, prisoners are only given a spoon, but they can also buy plastic cutlery at their own expense. Prisoners in Rijeka County Prison are given complete set of cutlery only when meat cuts are on the menu, whereas in Split County Prison, part of prisoners are provided with complete sets of cutlery while others are not. In Požega Reformatory, the complete cutlery sets are provided, whereas in Turopolje Reformatory, no knives are given. Such treatment, which is not founded upon individual security assessment, places persons deprived of their liberty in an unequal position, which is not good.

Special measures for maintenance of order and security and disciplinary measures

According to data obtained from COPSD, despite the continuing trend of declining prison population rates, last year, the number of implemented special measures for maintenance of order and security, has grown. Even though it does not necessarily imply something negative, this issue requires special attention, in particular due to inconsistent treatment and deficiencies of the legal framework, which is something that we have warned about in previous reports.

*NUMBER OF SPECIAL MEASURES
FOR MAINTENANCE OF ORDER AND
SECURITY IN PULA COUNTY PRISON*



In some penal institutions, for example in prisons in Bjelovar and Karlovac, no cases of special measure implementation were recorded in 2016, whereas in others, for example in Pula County Prison, there was a significant increase in their number. Although it is stated that this is the result of consistency in the keeping of Records on Implementation of Special Measures, the impression gained is that after in 2015, a prisoner detained in a specially secured room

free of dangerous objects, set himself on fire, treatment of prisoners by judicial police officers has become more repressive, which is also contributed to the fact that positions in Security Department remain unfilled. Even though a more repressive approach does not necessarily imply unlawful or unprofessional conduct, it is necessary to ensure that pursuant to EPSA, prisoners' rights are restricted only exceptionally and if this is completely necessary, whereas the manner in which their rights are being restricted must be reasonable.

Last year, the special measure of placement in a specially secured room, free of dangerous object, was imposed 40 times, with Pula County Prison registering the highest frequency rate, where measure was imposed 15 times. However, the room intended for implementing this measure has only been partially renovated after a prisoner set himself on fire there, which

Prisoners' rights may be restricted only exceptionally and if this is completely necessary, whereas restrictions must be reasonable.

means that detention conditions there are completely inadequate (walls are unlined with sponge, there is an exercise mat on the floor, there is no call bell) and that it should not be used until it has been completely renovated. Despite our recommendation to COPSD that

unique minimum technical conditions for ensuring security of implementation of this measure should be developed, in order to ensure that rights of persons deprived of their liberty – their right to life, to humane treatment and protection of dignity – are respected, these technical conditions have not been adopted yet.

Similarly, conditions in the premises intended for implementing disciplinary measure of solitary confinement, are not aligned with legal and international standards. For example, in Glina State Prison, although this room is located in the new building and is well-equipped, since outer walls of the building are covered with vertical security slats, there is no daylight coming through. In Rijeka County Prison, solitary confinement cell is in a very dilapidated state and since it is located underground, there is no daylight. However, during our visit, we were informed that, pursuant to our warning, the cell is no longer used for this purpose.

A problem that still remains unresolved is irregular medical supervision of prisoners who are subject to special measures or to the disciplinary measure of solitary confinement, which is prescribed by EPSA. For example, in Pula County Prison, it is common practice that physicians do not perform daily check-ups of prisoners whose security or health are not at risk and who do not oppose the imposition of solitary confinement measure. In addition, it is not always possible to organize medical check-ups on weekends either and, contrary to the provisions of EPSA, results and physician's observations are not recorded in the book on the execution of disciplinary measure of solitary confinement.

Lack of medical supervision may call into question the legality of execution of certain special measures, such as placement in a specially secured room, free of dangerous objects, restraining and disciplinary measure of solitary confinement.

During our visit to Glina State Prison, difficulties have been noticed when it comes to obtaining physician's consent to implement the measure of placement in a specially secured room, free of dangerous objects, which head of the prison must obtain within six hours from the beginning of measure execution. Community Health Centre in Glina, which was responsible for granting such consent in cases where measure was ordered to be imposed during the night or on weekends, has ceased to perform such medical check-ups because they do not represent emergency cases. As a result, State Prison officials had to escort prisoners against whom the measure was pronounced, to the Prison Hospital, which may represent a security risk, because those prisoners are often in a very poor mental state. Even though, according to COPSD, in the meantime this problem has been resolved, it is important to notice that lack of medical supervision may call into question the legality of execution of certain special measures, such as placement in a specially secured room, free of dangerous objects, restraining and disciplinary measure of solitary confinement.

Legal protection

Despite the fact that during our visit, we noticed certain positive changes, effectiveness of legal protection is still insufficient. For example, Rijeka County Prison has installed a complaints post box, but, according to information collected during our visit, not a single complaint has been filed. This would not be at all surprising, had the majority of prisoners not complained about accommodation conditions and treatment by the prison staff during NPM visit. The situation is almost the same in Pula County Prison, where according to data collected by COPSD, in 2016, not a single complaint was filed.

During our visit to Glina State Prison, it was established that the head of the prison regularly responds to complaints, even those submitted anonymously, in which case the response is posted on the notice board, which is certainly an example of good practice. In some penal institutions, for example in Pula County Prison, no records of complaints are being kept, making it impossible to determine the frequency and the reasons for which prisoners complain, nor whether complaints have been responded to within the legally determined time limit.

Responses to complaints still provide superficial explanations, thus it is impossible to discern the facts on the basis of which it is decided whether complaints are well-founded or not. For example, during our visit to Glina State Prison, it was established that a prisoner wrote a statement according to which he was beaten by judicial police officers in Prison Hospital, who then ordered the other prisoners to “set him straight”, after which he suffered yet another attack in the room. Medical examination following his return from Prison Hospital revealed scratches on the temple region of the head, behind the ear and on the upper lip. His statement and medical history were forwarded to Prison Hospital, which provided a one-sentence reply, stating they had found no elements that would prove that the prisoner had been treated illegally, or that means of coercion had been used, or that he had suffered any form of threat, mental or physical abuse. Such conduct on the part of competent bodies did not allow for prisoner’s allegations to be sufficiently and adequately examined.

During our visit to Rijeka Prison, following insight into Records on Judicial Control, it was established that the last time the competent judge performed supervision of the execution of remand imprisonment was in June 2011.

Pursuant to Criminal Procedure Act (CPA), one of the forms of protecting the rights of prisoners on remand arises from the obligation of either President of the Court or a judge appointed by the former, to at least once a week visit prisoners on remand and take necessary measures in order to eliminate any irregularities. However, during our visit to Rijeka Prison, following insight into Records on Judicial

Control, it was established that the last time the competent judge performed supervision of the execution of remand imprisonment was in June 2011, which is unacceptable. On the other hand, most prisoners on remand detained in prisons regularly visited by the competent judge, claim that judicial control is only formal, that judges ask if everything is fine while standing in the corridor and never enter their rooms unaccompanied by a judicial police officer, in order to hear their complaints.

Failure to decide upon appeal against the decision on pronounced disciplinary measure within the legal deadline of 48 hours, is still common practice, which is something that we mentioned in the last-year report.

Contacts of prisoners on remand with the outside world

“I am single and have nobody, but I feel sorry for inmates who see their wives for only 15 minutes. Afterwards, they become nervous.”

In four prisons, those in Varaždin, Zagreb, Pula and Rijeka, an anonymous survey of 113 male and seven female prisoners on remand was conducted, regarding the manner in which visits are organized. In their opinion, persons serving prison sentence have more rights than they do, which is something that surprises them, because given the presumption of innocence, the situation should be the opposite. 18% of the surveyed prisoners receive no visits at all – some because they have nobody, some because their parents are sick and old, some have families

that are poor or live far away, whereas others mention poor conditions under which visits take place as the reason. Only very few prisoners on remand who have children under 14 years of age, are visited by them. As a reason for this, some mention that they are on bad terms with their mother, some consider that it would be a traumatizing experience due to the fact that conditions under which visits take place are very poor, whereas others are ashamed and do not want their children to know that they are in prison.

On average, they receive three visits a month, whereas the satisfaction rate regarding the manner in which visits take place, is 2.5 (out of 5). They are mostly dissatisfied with the manner in which visits are organized as well as with technical conditions. However, at the same time, most of them express their contentment as for the manner of conduct on the part of judicial police officers during visits. Some prisoners on remand emphasize that visitors, among whom are usually children and older people, are left to queue outside the prison entrance in inadequate conditions in the sun or pouring rain, waiting for their turn to make a visit, which is for example the case in prisons in Varaždin and Rijeka. They all complain that length of visits is too short, that visits, except for those involving children, are closed, i.e. visitors are separated by a screen, and that great number of visitors end up yelling. In such circumstances, it is impossible to ensure a sufficient degree of privacy either. Prisoners on remand are bothered by the lack of direct contact with visitors, especially their wives. Even though Ordinance on House Rules in Remand Prisons prescribes that prisoners are allowed a minimum of 15 minutes and a maximum of one hour visits, they are rarely allowed to last for longer than 15 minutes. Therefore, it is necessary to consider the possibility of allowing longer visits and granting consent more frequently to prisoners for receiving visits and establishing direct contact with the visitor. For example, Varaždin County Prison has granted all prisoners on remand who do not receive visits from their children, the right to two open visits a month, where direct contact is enabled and there is no screen.

Visits by children younger than 14 years of age usually last for up to 30 minutes and take place in a special room, where direct contact between the parent and child is allowed, with the exception of prisons in Zagreb and Rijeka. In Zagreb, children's visits take place in the same room as those made by adult family members, without them being portioned by a glass, which does not necessarily allow close contact; similarly, in Rijeka, due to shortage of judicial police officers, children's visits do not take place in a specially designed room adapted to children, but in the room for adult visitors. All penal institutions should provide the possibility for visits by children younger than 14 to take place in a specially designed room adapted for accommodating children.

Accessibility of prisons to disabled persons

Most penal institutions that we visited in 2016 in collaboration with Disability Ombudswoman, are situated in inaccessible buildings, where prison departments are located on different floors connected by a staircase.

Accessibility elements for overcoming height barriers are provided only by Glina State Prison. Even though there is a staircase already at the entrance to the building, only several prisons have installed adjacent ramps. Disabled persons who are unable to use the staircase have no access to fresh air and are prevented from engaging in activities available to other prisoners, for example accessing visiting premises or cafeteria. Sanitary facilities in dormitories are mostly inaccessible, including shower cubicles. People who move with the help of a wheelchair cannot use phone booths, because they are positioned at an inadequate height. A positive example is given by Pula County Prison which introduced necessary modifications and which disposes of a room equipped with sanitary facilities, situated on the ground floor, completely adjusted to accommodate disabled prisoners. On the ground floor, there is also an infirmary, visiting premises, cafeteria and a chapel, which they can also easily access.

Entrance to the new building of Glina State Prison, its corridors and upper floors are almost completely accessible. Each of the six departments provides one room with sanitary facilities accessible to disabled persons, a library, a cafeteria, as well as premises where leisure programmes are held, IT workshop room, visiting premises, common room and a walkway. It has been noted that Glina State Prison has adopted a good practice of engaging prisoners-“assistants” for assisting disabled prisoners, who help them perform everyday activities and overcome difficulties in exercising rights that other prisoners have, which is a practice that should be introduced into other penal institutions as well.

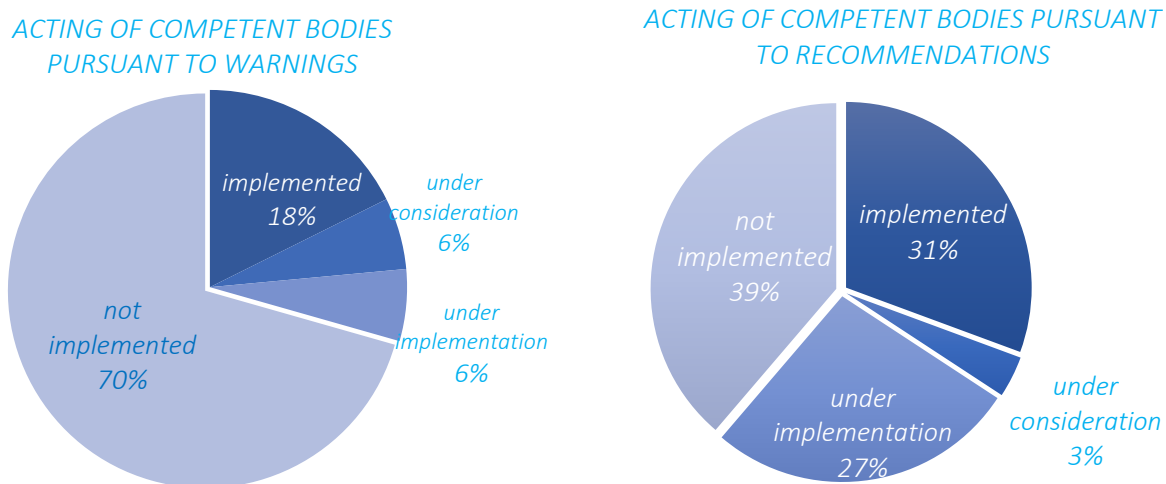
Given that architectural inaccessibility of prison system for disabled persons may result in degrading treatment of prisoners, which may have the characteristics of inhuman treatment, it is essential that all penal institutions render entrance to the building accessible, equip the ground floor with at least one room intended for accommodating disabled prisoners, with a toilet and bathroom, and enable them to use the walkway.

Conditions under which children responsible for a criminal offence or misdemeanour are deprived of their liberty

In order to examine conditions in which children responsible for a criminal offence or misdemeanour are accommodated, we visited two prisons in collaboration with Ombudswoman for Children. Both prisons have a separate room for minors; however, in Split County Prison, it is in dilapidated condition, with sanitary facilities area not being partitioned, which means that prisoners’ privacy is being invaded; in addition, there is no ventilation or sound insulation. A positive example is Šibenik County and State Prison, which provides minors with a room that is airy and neat and equipped with sanitary facilities separated by a wall. Given that accommodation conditions of minors in prison system may result in degrading treatment and produce a traumatizing effect as well as that minors are a vulnerable group, it is necessary that these facilities be renovated and adjusted to their specific needs, at the same time meeting international standards.

Implementation of NPM recommendations

During our follow-up visits to prisons in Zagreb, Rijeka, Varaždin and Split, Šibenik state and county prisons and state prisons in Glina and Lepoglava, we assessed, among other things, to what extent warnings and recommendations issued following our visits to penal institutions in 2015, had been implemented.



Out of a total of 18 warnings, seven were addressed to COPSD and 11 to penal institutions. Just like in previous years, recommendations that require considerable financial resources, agreement between two or more administrations or amendments to regulations, have not been implemented. Irrespective of this, high percentage of unimplemented warnings is worrying, especially because those issued in cases that may result in torture, inhuman or degrading treatment, additional violation of human rights of persons deprived of their liberty or may cause conduct contrary to the law.

Out of a total of 112 recommendations, 34 were issued to the Ministry of Justice or COPSD (four recommendations, along with Ministry of Justice and COPSD, were also addressed to Croatian Health Insurance Fund and Ministry of Health), whereas 78 were issued to penal institutions. Ministry of Justice and COPSD acted in accordance with 15% of granted recommendations, whereas penal institution with 37%. On the other hand, Ministry of Justice and COPSD failed to implement as much as 42% of recommendations and penal institutions 37%.

Even though as much as 58% of recommendations have already been or are currently being implemented, the fact that this is true of only 24% of warnings, is worrying. In addition, in their reports, COPSD and - although to a somewhat lesser extent - penal institutions, have recently started to claim that

Even though as much as 58% of recommendations have already been or are currently being implemented, the fact that this is true of only 24% of warnings, is worrying.

they refuse to act in accordance with some warnings or recommendations, because their perception of the situation is completely different from the one established or because they have other reasons for such conduct. Not only is this contrary to Act on the NPM, which provides that state bodies or institutions are obligated to implement measures determined by a warning or recommendation, but the reasons for which they act in such manner, whether they be lack of financial resources, staff, legal framework deficiencies or other, must not be an excuse for limiting or violating prisoners' rights.

Despite the fact that certain measures have been undertaken, recommendations from the Ombudswoman Report for 2015 have either remained completely unimplemented or have been implemented to a lesser extent. When it comes to submitting reports on steps undertaken, cooperation with COPSD and penal institutions was satisfactory; however, Ministry of Justice and Ministry of Health failed to deliver their responses regarding two recommendations.

1.3. Assessment of state in the prison system

In 2016, no significant changes occurred in the prison system; and, therefore, the level to which human rights of persons deprived of their freedom are respected, is the same as the one last year. Systematic problems when it comes to organizing the manner in which healthcare services are provided, still persist, which is something we dealt with in more detail in the Report for 2015, claiming that this may lead to violation of prisoners' rights.

Neither the Prison Hospital nor the so-called infirmaries or prisoner healthcare wards, which are available in every penal institution, are medical institutions nor have they been organized in line with the Healthcare Act. In addition, most of them do not meet requirements of the Ordinance on Minimum Standards regarding Premises, Staff and Medical-Technical Equipment of a Medical Institution Providing Healthcare to Persons Deprived of Their Liberty. Ombudswoman did not receive information requested from the Ministry of Health, regarding implementation of Constitutional Court Decision U-III/64744/2009 from 2010, on establishment of efficient supervision system over provision of healthcare in the entire prison system; nevertheless, based on information available, this decision has not yet been implemented, despite the fact that considerable amount of time has already elapsed.

Due to insufficient numbers of prison doctors, certain penal institutions are unable to ensure continuous healthcare, a problem that is temporarily solved by concluding piecemeal agreements. This does not represent a permanent solution because instead of being present

Most problems would be easier to resolve were the Ministry of Health to accept the responsibility for ensuring adequate healthcare services to prisoners and population in general.

on a full-time basis, a physician is normally present only several hours a week. Healthcare is thus not readily available to prisoners, who spend weeks waiting for the requested medical check-up. Moreover, due to insufficient numbers of

employed nurses / medical technicians, in some penal institutions, in the evening or during the weekend, therapy is distributed by judicial police officers on duty.

Most problems would be easier to resolve were the Ministry of Health to accept the responsibility for ensuring adequate healthcare services to prisoners, as for the population in general. Already in 2006, the Council of Europe's Committee of Ministers reached a conclusion that the most efficient way to implement European Prison Rules, in its part pertaining to healthcare organization, is that the ministry competent for health be responsible for provision of healthcare in prisons. From the perspective of public healthcare, principle of integration is also emphasized in the Recommendation of Committee of Ministers Rec(2001)12 on the adaptation of health services to the demand for healthcare and healthcare services of people in marginal situations.

Croatian Health Insurance Fund continues to put prisoners in an unequal position with respect to other groups of insured persons. Namely, those who have registered their permanent or temporary residency at the address of penal institutions and whose income is too low, are usually denied the possibility of their supplementary health insurance being financed from the State Budget, all this despite the fact that they meet the legally prescribed conditions. Even though about 40% of prisoners serve prison sentence lasting for more than three years – therefore, change of residency is not short-term, Croatian Health Insurance Fund insists that they must submit documents confirming their marital and family status as well as the amount of household income, regardless of the fact that they obviously do not live in their family household.

Even though multi-year trend of prison overcrowding continues to wane, prison system accommodation conditions have still not been aligned with legal and international standards. Namely, ensuring 4 m² and 10 m³ of living space is only part of every prisoner's right to be detained in conditions compatible with human dignity and healthcare standards. Unsatisfactory hygiene conditions, lack of privacy while in the toilet, placing smokers and non-smokers in the same cells, are only some of the problems that will be very difficult to resolve without considerable financial investments.

Efficiency of legal protection, which is the fundamental precondition for fighting against impunity of all forms of torture, inhuman or degrading treatment or punishment, is still not satisfactory especially with regard to prisoners on remand.

Allegations made by prisoners that they have been beaten up, are insufficiently investigated even when medical documentation exists, which is unacceptable given that such cases possibly represent violation of Articles 23 and 25 of the Constitution of the Republic of Croatia, of Article 3 of ECHR and Articles 1 and 4 of the Charter of Fundamental Rights of the EU. In addition, prison system has still not created an atmosphere in which reporting unlawful conduct or misuse of powers, would be a common practice. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) Standards from 2015, emphasize that it necessary to clearly understand that responsibility for unlawful conduct is attributed not only to perpetrators, but also to those who were aware or should have been aware of such conduct and who failed to prevent or report it. Moreover, physicians employed by penal institutions are almost completely uninformed of their exceptionally important role when it comes to protecting human rights of persons deprived of their liberty, pursuant to international standards such as Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

Allegations made by prisoners that they have been beaten up are insufficiently investigated even when medical documentation exists, which is unacceptable given that such cases possibly represent violation of Articles 23 and 25 of the Constitution of the Republic of Croatia, of Article 3 of ECHR and Articles 1 and 4 of the Charter of Fundamental Rights of the EU.

In November 2016, in two largest penal institutions – Lepoglava State Prison and Zagreb County Prison – we carried out an anonymous survey of prison officials, regarding their knowledge of UN revised Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules). Although this being one of the most important international documents from this field, data obtained through the survey were devastating, given that as much as 81% of respondents in Zagreb County Prison and 71% in Lepoglava State Prison, reported that they were unfamiliar with the document. Since treatment of prisoners depends directly upon the level of knowledge of their rights, it is necessary to organize intensive and systematic trainings of officials and to translate and make available all international standards pertaining to treatment of persons deprived of their liberty.

As much as 81 % of surveyed officials in Zagreb County Prison and 71% in Lepoglava State Prison, claimed that they were unfamiliar with Mandela Rules.

Even though according to the Report on the State and Functioning of State Prisons, County Prisons and Reformatories from December 2016, the number of judicial police officials is satisfactory, the data collected during our visit shows the opposite. The noticed lack of judicial police officers directly affects not only treatment of prisoners and exercise of their rights, but also security of penal institutions. In 2016, this problem was also pointed to by Croatian Judicial Police Trade Union, emphasizing that reduced number of officials is dangerous and may represent a threat to general security.

Adoption of new EPSA is certainly one of the preconditions for strengthening protection of prisoners' fundamental human rights and freedoms and for harmonising treatment in the prison system. However, just like Annual Normative Activities Plan for 2015 and 2016 foresaw its adoption, the latter is also foreseen by Annual Normative Activities Plan for 2017. What is more, according to information available, drafting of the act has not yet begun, which, considering complexity of the subject, is not promising. On the other hand, in their part pertaining to execution of remand imprisonment, amendments to the Criminal Procedure Act that are under way, foresee certain positive changes, especially with regard to the right of prisoners on remand to file a complaint – without limitation or content supervision – to Ombudsman as well as when it comes to competent judge's acting upon complaints filed by prisoners on remand, which he or she must respond to in writing within 30 days. In spite of recommendation that CAT addressed to the Republic of Croatia in 2014, amendments do not cover part of Article 108.a, stipulating that every arrested person, among other rights, has the right to emergency medical assistance. Given that besides emergency medical assistance, an arrested person has the right to request examination by an independent physician, which is one of the fundamental guarantees for preventing torture and inhuman treatment, this should certainly be taken into account.

2. POLICE SYSTEM

2.1. Protection of citizens' rights, including persons deprived of their liberty, in treatment by the police

Complaints made to Ombudswoman

I will be punished for the offence I have committed, I am aware of that and I don't have any problems with that. However, I would like to inform the public about the manner in which police officers treated me and I would like to know whether they will be held responsible for what they had done to me.

In 2016, Ombudswoman initiated 203 investigative procedures regarding police treatment and unprofessional and unethical behaviour of officers towards citizens. Apart from acting upon filed complaints, some investigative procedures were brought on our own initiative.

Large number of complaints pertained to misuse of powers within procedures that imply use of physical force and result in deprivation of one's liberty. Pursuant to CPT recommendations, means of coercion should be used exclusively in proportion and when necessary, for persons acting in a violent and/or agitated manner, to be brought under control; however, this year we received complaints pertaining to misuse of such powers. In one case, complainant claimed

that means of coercion were used even after he was no longer able to offer resistance, whereas another complainant stated that physical injuries were a result of means of coercion employed while in the police station. Even though Ministry of the Interior rejected these allegations, claiming that injuries were suffered during disturbance of public order and in a fight between several persons, claimant, who was taken to the police station with visible injuries, was given medical assistance only subsequently. Police officers failed to act in accordance with the Ordinance on the Conduct of Police Officers, according to which they are required to ensure medical assistance to every person who has been injured after means of coercion have been used.

Due to lack of evidence, large number of complaints regarding unprofessional and inappropriate behaviour of police officers, remain unconfirmed, since facts are determined on the basis of statements made by both police officers and citizens, which are usually contradictory. However, in 2015, Ministry of the Interior began implementing the project E-police, which, among other things, enables recording police officers' conduct and the aim of which is to protect not only police officers from unfounded citizens' complaints, but also to protect citizens from unlawful and unethical conduct by the police. Recordings made in this manner may be used as evidence in court proceedings as well as for the purpose of performing supervision of conduct by police officers and assessing its legality, which means that they would represent the most direct form of civilian oversight. However, there was not a single case in 2016, within which, having asked for a video recording, we were actually provided with one, because treatment in question had not been recorded at all.

Furthermore, in some investigative procedures it was impossible to confirm allegations regarding inappropriate, unprofessional and belittling conduct by police officers in police stations, because captured surveillance videos are stored for no longer than five to seven days. Consequently, Ombudswoman recommended that video recordings be stored for 30 days, considering that this period of time equals the one that citizens are granted for filing a complaint. Ministry of the Interior accepted this recommendation and corrected video surveillance parameters for police stations of Zagreb Police Administration; nevertheless, this remains to be done in other police administrations as well.

In 2016 we again received complaints from elderly citizens, who point to excessive use of means of coercion, which is worrying, given the obligation that elderly people must be treated with respect. For example, a 73-year-old woman who got upset during an interview, according to allegations made by the Ministry of the Interior, started insulting and attacking police officers. Consequently, means of coercion – physical force and attaching restraints on the person's hands – were imposed upon the woman, after which she was arrested. While being arrested, she warned the police officers about her poor health and

In 2016, we again received complaints from elderly citizens, who point to excessive use of means of coercion, which is worrying, given the obligation that elderly people must be treated with respect.

asked them to be treated with respect. In addition, despite the legally prescribed possibility that a person under surveillance performed by at least two police officers may have their hands cuffed in the front, the woman was deprived of her liberty by having hands cuffed behind the back. In this case, police intervention was provoked by a blocked driveway!

Furthermore, means of coercion were imposed upon a 71-year-old man, completely deprived of legal capacity. In its Report, Ministry of the Interior states that while collecting bottles, he started insulting police officers, after which the latter resorted to means of coercion in order to arrest him and bring him to the police station. In the meantime, another 71-year-old man shouted that he did not approve of such treatment of elderly people, after which means of coercion were applied on him as well. Citizens who had gathered protested out loud, pointing to inappropriateness of such treatment by the police, which resulted in two more interventions, which points to the fact that lives of neither police officers nor any other person, were directly threatened.

Although police officers should treat members of vulnerable groups with special care and apply their police powers in such a manner that a person's rights and freedoms are interfered with as little as possible, examples such as these prove that it is still not so. In addition, Police Directorate's position on the legality of application of means of coercion to elderly citizens, is also worrying, which is something that we pointed out in the Report for 2015. Even though it is indeed true that they acted pursuant to the law, the question regarding effectiveness of Ordinance provisions, remains unanswered, given that police officers do not comply with them and that Police Directorate is willing to justify such conduct.

These examples show that police officers are still not familiar enough with human rights protection, especially when performing their duties or implementing powers with respect to vulnerable groups, in particular elderly people. Moreover, the fact that almost trivial offences result in employment of the measure of deprivation of liberty, is also worrying.

Complaints also referred to application of powers when it comes to establishing and verifying a person's identity because, when doing so, many officers resort to the measure of bringing a person to a police station, even though there are measures that interfere with human rights and freedoms to a somewhat lesser degree. Pursuant to Police Duties and Powers Act, when verification of a person's identity is impossible to perform by inspection of identity card or other public document, this may be done on the basis of a statement, which means that verification of identity by bringing the person to a police station should be the last option when authenticity of the document or of data used by the person is uncertain.

Policing oversight

An efficient civilian oversight of the policing system still does not exist, and neither does the Ministry of the Interior's Commission for Reviewing Complaints, foreseen by the Police Act as a form of civilian oversight.

In 2016, internal oversight system of the Ministry of the Interior recorded 2,311 complaints and anonymous submissions. It resolved 2,093 cases, out of which 198 were completely or partially well-founded, which, as in previous years, represents less than 10%. Considering that the former Commission even in difficult working conditions recorded more than 20% well-founded complaints and considering their significant number, the need for achieving more efficient internal oversight, which would result in decisions arising from objective consideration of complaints, is still present.

In this context, it is necessary to stress the fact that even when an efficient civilian oversight of the policing system exists, it cannot function as a substitute for judicial control guaranteed by the Constitution. Police Act prescribes as well that, except for contacting internal police oversight bodies and the Commission, there are other legal means that citizens may use; however, they usually claim that they are unfamiliar with what these are. For example, General Administrative Procedure Act foresees that a person who deems that an action of an administrative body, on which no decisions are adopted, has violated his or her right or legal interest, may file a complaint while such action is still ongoing or as long as the consequences of such action are present. However, Ministry of the Interior does not reach decisions based on filed complaints, following conducted internal oversight procedures with the results of which citizens are unsatisfied, whereby it eliminates the possibility of a competent administrative court deciding upon such cases. This is contrary to expert opinions, according to which conduct and actions by police officers may be subject to complaints and according to which it is probable that an increasing number of citizens shall use complaint as remonstrative legal remedy.¹

2.2. Visits to police stations and detention units

In accordance with its competences, with the aim of preventing torture and other cruel, inhuman or degrading procedures or forms of punishment, in 2016, NPM visited 11 police stations in Split-Dalmatia County Police Administration and four in Šibenik-Knin County Police Administration as well as their detention units; in addition, accommodation conditions, records on persons deprived of their liberty and those regarding use of means of coercion, have been examined. Encountered persons deprived of their liberty had no complaints regarding their treatment; however, it was established that accommodation conditions had not been completely aligned with international standards, which may represent degrading treatment and which is contrary to Standards of Premises Where Persons Deprived of Their Freedom of Movement Are Held.

Accommodation conditions

Most detention units do not meet the standards foreseen by the Ordinance on Admission and Treatment of Arrested and Detained Persons and the Records on Persons Detained in a Police

¹ Prof. Ivan Koprić, PhD *Fundamentals of the New General Administrative Procedure Act*, 2010.

Detention Unit. For example, detention premises of Split-Dalmatia County Police Administration, which are located in the building's basement, provide no separate area for spending time in fresh air, whereas Šibenik-Knin County Police Administration has no detention unit, which is why premises of police station within that police administration, are used.

Most police stations provide rooms of inadequate size, with only a concrete or wooden bed frame with no mattress or bedclothes on it. A positive example are rooms in all police stations of Šibenik-Knin County Police Administration – the only exception being Drniš – which are neat, with mattresses and blankets provided. Rooms are deprived of daylight, although it is foreseen by the Ordinance and CPT standards.

In most police stations, sanitary facilities are under video surveillance, whereby privacy of accommodated persons is invaded, which is contrary to the Standards.

In most police stations (Makarska, Omiš and Drniš), sanitary facilities are under video surveillance, whereby privacy of accommodated persons is invaded, which is contrary to the Standards. A positive example are police stations in Kaštela and Knin, where partitions have been installed, thus preventing video surveillance system from covering toilet facilities. In the detention unit of Split-Dalmatia County Police Administration, video surveillance system has been installed in four rooms and along the corridors, but not in other parts of the building where persons deprived of their liberty are situated; on the other hand, even though a video surveillance system has been installed in Vis Police Station, it is currently out of service, as a result of which prisoners communicate with police officers in the on-call room, by summoning them. Situation is similar in other police stations as well, where video surveillance does not cover corridors or other areas where persons deprived of their liberty freely move; in addition, communication with police officers is performed by waving at the camera, because there is no separate call bell system. In some police stations, rooms for provisional confinement dispose of no sanitary facilities and when needed, persons deprived of their liberty are taken to a toilet normally used by police officers.

Despite earlier recommendations to the Ministry of the Interior, detention supervisors simultaneously act as officials of the operations and communications centre, which is not an acceptable solution because performing two duties may result in employees' becoming overburdened. Pursuant to the Ordinance, detention supervisor is responsible for correct application of regulations on treatment of detained persons and is required to inform detained persons about their rights and obligations. Since in detention units, there are no detention supervisors who would be exclusively responsible for this type of tasks, it remains unclear to what extent they are able to overlook treatment of detained persons. Furthermore, the Ordinance does not foresee the possibility of powers being transferred to other police officers, which is for example the case in Šibenik-Knin County Police Administration. Because of several competences, detention supervisors can neither completely apply the Ordinance nor completely monitor treatment of detained persons, which represents an additional risk when it comes to inhuman or degrading treatment.

Rights of persons deprived of their liberty

During our visits, Record Book and Records of Arrested Persons were inspected, for the purpose of establishing the extent to which prisoners' rights are respected when being deprived of their liberty. Practice of record keeping differs among police stations, which means that while some only use electronic format, other use the paper one as well. Criminal case files contain all mandatory documents, including certificates of handover of arrested persons, whereas records are kept in an orderly manner and in accordance with the Ordinance. Nevertheless, in some cases, parts of the report pertaining to treatment of the arrested person or information on time of release / delivery to court or other body, are lacking. Arrested persons rarely claim their right to consult an attorney.

Arrested persons are informed about the reasons for the arrest as well as their rights, whereas police administrations dispose of lists of certified interpreters and attorneys. Foreign nationals are allowed to contact embassies or consulates. Due to limited number of court interpreters, some stations cooperate with tourist boards, whereas sometimes police officers who speak foreign languages engage in interpretation. Persons deprived of their liberty are searched by police officers of the same sex, all their belongings are seized, including those that may potentially be used for self-harm or attack.

Most police stations do not dispose of sufficient means for ensuring a daily meal to persons deprived of their liberty; as a result, the latter either buy their own food, when they dispose of sufficient financial means; or,

Persons deprived of their liberty held in police stations should be served food, including at least one full meal a day, at appropriate time; however, most police stations are unable to meet this requirement because they lack sufficient means. Meals are served in

detention units, which was confirmed by persons held in Šibenik and Drniš Police Stations. However, in Knin and Vodice Police Stations, only detained persons are provided with food when premises are being used as detention unit, not for all persons deprived of their liberty. In most police stations, food is provided at the request of persons deprived of their liberty, when they dispose of their own financial means; or, it is police officers who buy them food at their own expense, which is completely unacceptable.

Uniform practice for monitoring provisionally confined or arrested persons, does not exist. Hence, some police stations use a control guard sheet, which they have introduced on their own initiative. Control of prisoners is performed every half an hour; data on provided medical assistance are also entered. A positive example is Kaštela Police Station, where a detailed official note is taken on every provisional confinement, about whether restraint devices have been used in order to bring the person to the station, if there are visible injuries, if the person has sought medical assistance and whether the person has complained about any pain or alike.

During our visit to police stations, we noticed the practice according to which persons under the influence of alcohol are first subject to the temporary measure of placement in a special room, until opioid has ceased to have effect, and then they are arrested, which is explained by

the fact that this is the only way to question a person who is unable to answer questions under the influence of opioid substances. However, when a person is arrested, his or her rights are guaranteed pursuant to the Criminal Procedure Act and Police Act; conversely, as for provisional confinement, the person is simply placed into the station, for the purpose of preventing misdemeanour from being resumed. Even though the person is *de facto* deprived of liberty, he or she is not arrested, but simply confined in the police station; and, therefore, unaware of either reason for the arrest or of rights that he or she may assert. Rights granted to a person who is being arrested, are vitally important because they represent a guarantee against abuse and pursuant to CPT standards, they should be applied starting from the very first moment of a person being deprived of his or her liberty. Therefore, a person should be arrested immediately upon establishing that grounds exist for he or she to be confined and Ministry of the Interior should adopt a separate ordinance in order to regulate the question of accommodating persons under the influence of alcohol in a special room until opioid effects have worn off.

During our visit, records on use of means of coercion were inspected as well and, in cases foreseen by the Ordinance, assessment of justifiability of the use of means of coercion was requested. However, in some cases, assessment was made after expiry of the prescribed time limit of 24 hours following reception of written report.

Treatment of children

Most police stations that we visited in collaboration with Ombudswoman for Children, dispose of equipped separate rooms for interviewing children; alternatively, police measures in connection with this category of perpetrators take place in offices of police officers specializing in juvenile delinquency. In principle, there are few cases involving children being deprived of their liberty. Practice is inconsistent when it comes to conduct of police officers towards children caught while illegally involved in frequenting night entertainment venues; therefore, in some police stations, children are brought to the police station regardless of time or place where they are caught, whereas in others, children are taken home.

2.3. Assessment of the state of respect of rights of persons deprived of their liberty in the police system

Persons deprived of their liberty in police stations and detention units

Police officers are granted specific powers which, if not proportional or well-founded, may lead to inhuman or degrading treatment. According to APT Manual on Monitoring Police Custody, torture and other cruel, inhuman or degrading treatment or punishment occur more often in earlier phases of deprivation of liberty, when the person is arrested or confined provisionally in the police station, and the risk is even higher during the first few hours, when officers are put under greater pressure, for the sake of obtaining necessary information.

Accommodation conditions in most police stations do not meet the required standards; in addition, they do not dispose of sufficient funds for ensuring that every person deprived of their liberty is given a meal. Sanitary facilities are covered by video surveillance, which invades privacy, and detention units provide no area where persons could be in the fresh air.

As for use of means of coercion, it is particularly important to determine whether their use was justifiable and lawful as well as to perform this assessment within the foreseen deadline, which was not the case in some police stations in 2016. In accordance with ECHR practice, every state must provide arguments in order to prove that means of coercion were not excessively used. Complaints regarding excessive use of means of coercion, especially when there are visible external injuries and when medical examination did not follow immediately after it, may point to their ill-founded or unlawful use, as well as to possibility of torture, inhuman or degrading treatment. For this reason, it would be a good thing to have the premises in question equipped with video or audio recording devices which would represent an additional measure for protecting citizens' rights from violation, persons deprived of their liberty from abuse, but also police officers from unfounded abuse allegations. In addition, in order to improve the quality of police conduct, especially in the first phase of deprivation of liberty, it is necessary to carry out trainings of police officers on domestic and international standards of treatment, as well as on ECHR practice.

It is important for the premises to be equipped with video or audio recording devices which would represent an additional measure for protecting citizens' rights from violation, persons deprived of their liberty from abuse, but also police officers from unfounded abuse allegations.

3. PERSONS WITH MENTAL DISORDERS WHOSE FREEDOM OF MOVEMENT HAS BEEN LIMITED

"They tried to persuade me to sign a document claiming that I came to the hospital willingly, but I refused to do so. They made me take a pill, against my will."

In 2016, we received 18 complaints pertaining to involuntary hospitalization, conducted two investigative procedures in the field and visited four healthcare institutions that offer psychiatric treatment.

The case of a man whose identity remains unascertained, who spent 36 years in the Psychiatric Hospital Rab and more than 16 years waiting to be committed to a suitable social institution, clearly reveals inefficiency of collaboration between different administrations in this area. Throughout this time, he was deprived of appropriate rehabilitation services which are essential for the extent of his disability, since they are not available in the hospital, but within the framework of social care system. It is inadmissible that a psychiatric institution be responsible for all rights of a person who is being treated there, especially if this person does no longer need treatment. With identity unknown and with no personal identification

documents, a person *de facto* does not exist and it is impossible for him or her to realize fundamental human rights, guaranteed by numerous international documents, the Constitution and other regulations.

The mere fact that a person who suffers from mental disorders refuses to treat physical disease, must not be a reason for involuntary hospitalization or for imposing any medical procedures without his or her consent. Exception are situations where due to a mental disease, a person is not able to reach an informed decision on medical procedure in connection with treatment of a life-threatening physical disease. If preconditions referred to in the Act on Protection of

The mere fact that a person who suffers from mental disorders refuses to treat physical disease, must not be a reason for involuntary hospitalization or for imposing any medical procedures without his or her consent.

Persons with Mental Disorders have been fulfilled, or if the doctor has established that the state of physical disease has reached the status of particular emergency, seriously and directly threatening the life or health of the patient, the patient may be subject to a medical procedure without his or her consent, and this only as long as his or her life or health are threatened. Namely, given that from the Act on Protection of Persons with Mental Disorders, it does not arise that this pertains only to psychiatric treatment, but to all medical procedures, depriving the person of legal capacity or assigning him or her a special guardian is something that should not be

insisted upon. Since in this specific case, after one month of involuntary hospitalization and intensive psychiatric treatment, doctors estimated that the person was capable of giving consent to continue being treated on psychiatric ward, this meant that the person could also decide upon treating physical disease. Therefore, since that moment, the person had the right to refuse or accept treatment of physical disease, just like all other patients pursuant to the Act on Protection of Persons with Mental Disorders.

Problems in connection with the procedure of termination of involuntary hospitalization have also been detected. For example, in one investigative procedure, we established that as many as 14 days elapsed between the date on which Municipal Criminal Court reached a Decision authorizing renewal of the procedure and termination of involuntary hospitalization, and the date on which the person was actually released from the hospital. To put it differently, after becoming final, the Decision was forwarded to the Municipal Court, which having conducted a non-contentious procedure, decided upon termination of involuntary hospitalization. This type of conduct, which is a consequence of insufficiently precise legal regulations, represents a problem, given that liberty and rights of people with mental disorders are thus unnecessarily being breached.

In previous reports, we pointed to unacceptable conditions of some wards within psychiatric institutions. It is encouraging that in late 2017, patients are planning to be relocated into the new building of the Department for Forensic Psychiatry of the University Psychiatric Hospital Vrapče. However, conditions at the Department of Geropsychiatry are still not satisfactory, despite the fact that its capacity has been improved following reduction of bed numbers by

around 20. According to available information, even though funds had been available already in 2016, the construction could not have started given that it took one year for project documentation to be drafted, whereas now, building permit is waiting to be issued.

Persons with mental disorders who do not have supplementary health insurance are still charged a participation fee during involuntary hospitalization in psychiatric institutions, unless their diagnosis is indicated in the decision of Croatian Health Insurance Fund on the list of diagnoses the treatment for which is completely covered by compulsory health insurance, which is unacceptable.

Certain persons with mental disorders who do not have supplementary health insurance are still being charged a participation fee during involuntary hospitalization in psychiatric institutions, which is unacceptable.

We made unannounced visits to the Department for Psychiatry of the Clinical Hospital Centre Rijeka and Department for Psychiatry of the Pula General Hospital. Moreover, after receiving a request for help because of difficulties experienced during work performance caused by unacceptable workplace conditions, we made targeted visits to the Psychiatric Hospital for Children and Youth as well as Department for Child and Adolescent Psychiatry of the Clinical Hospital Centre Osijek. Following completion of our visits, even though no conduct that could represent torture was established, there were those that may be classified as degrading and even inhuman; therefore, 10 warnings and 20 recommendations were issued.

Considering that means of coercion restrict the rights of persons with more serious mental disorders, in 2016 we devoted more attention to their use. During our visit to Department for Psychiatry of the Clinical Hospital Centre Rijeka, we found a patient who was cumulatively being subject to the measures of isolation and restraint, which not only is contrary to the Ordinance on Types and Manner of Applying Means of Coercion on Persons with Serious Mental Disorders, but this may also constitute an infringement of Article 3 of ECHR, as was already established by ECHR Decision in the case M.S. v. Croatia (2015). At the same time, it is necessary to take into account that the premises used by this Hospital, for implementing the measure of isolation, are completely inadequate and that it is unacceptable that they are being used for this purpose.

Even though Ordinance on Means of Coercion lays down that a restrained patient should be placed alone in a room always when this is possible, they are usually restrained in front of other patients. Thus, during our visit to the Department for Child and Adolescent Psychiatry of the Clinical Hospital Centre Osijek, we established a case of a child being subject to the measure of restraint while in an eight-bed hospital room, in front of adult patients, which may represent a security risk; in addition, being seen by other patients may cause a feeling of low self-esteem and may represent degrading treatment.

Due to high number of unfilled systematized job positions for nurses / medical technicians, restraint procedures and measures are not always possible to carry out in accordance with the Ordinance on Means of Coercion – stipulating that such measures should be carried out by at least five persons – especially during the night or on weekends, which may result in violation of

rights of persons with mental disorders, but also in frequent injuries at work, resulting in long sick-leave periods of nurses and medical technicians.

Even though in its Report for 2007, CPT recommended that the Republic of Croatia should keep special separate records on the use of means of coercion, the manner in which this is performed is still very much inconsistent; instead, data are usually collected in separate medical records, which does not allow for their use to be monitored systematically.

Persons with mental disorders should be provided with the same treatment conditions as other patients.

While most psychiatric institutions have aligned their guidelines and forms regarding application of healthcare quality standards, with the recent amendments to regulations from the area of protection of persons with mental disorders, Pula General Hospital and Clinical Hospital Centre Rijeka have not yet done so; instead, they act pursuant to the provisions based on the former Act on Protection of Persons with Mental Disorders and other regulations on the right of patients, which may also cause violation of their rights.

When in a stable phase, patients with mental disorders are often deprived of optimal treatment of their physical diseases in the so-called “somatic” departments and instead of being held there, they are being directed to the Department for Psychiatry in order to receive consultant treatment. Situation is the same in case of patients who undergo a surgical procedure, which is unacceptable, and patients with mental disorders should be provided with the same treatment conditions as other patients.

Due to utterly inappropriate spatial conditions in the Psychiatric Hospital for Children and Youth, Department for Child and Adolescent Psychiatry of the Clinical Hospital Centre Osijek and that of the Clinical Hospital Centre Rijeka, treatment of children and performance by the staff is seriously impeded; and, therefore, it is necessary to ensure additional spatial capacities and equipment.

Accommodation conditions in psychiatric departments are at an unacceptable level of quality and are contrary to the prescribed standards and CPT recommendations; in addition, they often represent a threat to the patient’s right to privacy, limit their freedom of movement, hinder treatment and rehabilitation and in certain cases, they may be the cause of degrading treatment. Therefore, all institutions that we visited should immediately start adjusting the existing premises and constructing new ones. The quality of accommodation conditions of premises for hospital treatment of children and youth, are particularly worrying. Hospital ward of the Psychiatric Hospital for Children and Youth is the only closed psychiatric ward for children and due to extremely cramped spatial dimensions, the department disposes of no open areas. Some patients are sent to hospital without being in need of closed-ward treatment, which means that their freedom of movement is restricted with no medically valid reason. Due to utterly inappropriate spatial conditions in the Psychiatric Hospital for Children and Youth, Department for Child and Adolescent Psychiatry of the Clinical Hospital Centre Osijek and that of the Clinical Hospital Centre Rijeka, treatment of children and performance by the staff is seriously

impeded; and, therefore, it is necessary to ensure additional spatial capacities and equipment, in line with the prescribed minimum criteria. Inability to group the patients according to age and diagnosis has a negative effect on the quality of treatment. Due to inadequate conditions, parents sometimes refuse to have their child hospitalized, despite psychiatrist's recommendation. Accommodating and treating children in such conditions represents violation of their rights and constitutes degrading treatment. Even though Clinical Hospital Centres Osijek and Rijeka have been included in the list of institutions providing separate accommodation and treatment possibilities for children and adults, this does not function in practice.

Unnecessary restriction or violation of rights of persons with mental disorders stem from formal deficiencies, lack of material and human resources and sometimes from insufficient knowledge of international standards and provisions of the Act on Protection of Persons with Mental Disorders. Therefore, it is necessary to improve regulations, organize permanent training of healthcare professionals and ensure necessary financial means.

4. HOMES FOR THE ELDERLY AND DISABLED

Restriction of freedom of movement in social care institutions

Social care system encompasses many different institutions in which freedom of movement may *de facto* be restricted. In 2016, we visited three homes for the elderly and disabled, a home for adults and a home for children and youth, following which we issued three warnings and 28 recommendations.

a) Restriction of freedom of movement in homes for the elderly and disabled

"...It's been a long time since I last went for a walk in the courtyard. I feel like I'm in prison..."

The purpose of our visits to homes for the elderly and disabled was to determine the conditions in which persons under permanent care live, as well the method of their placement into the relevant institution and the manner in which they are being treated there; in addition, special attention was devoted to situations that may represent cases of restriction of their freedom of movement.

Lack of knowledge of regulations is one of the reasons why rights of persons under institutional care are being violated. An elderly and disabled person may not be placed in a social care institution against his or her will, unless the person is deprived of legal capacity in regard to the decision on where he or she will live or unless a special guardian has not been determined for this purpose. Consent from family members cannot function as substitute for the consent from the person who is being placed in an institution, whereas every involuntary placement in an institution represents restriction of movement without valid legal basis.

Although employees usually treat elderly and disabled persons in a very professional manner, violations of certain constitutional and legal rights have been noticed, including certain degrading treatments.

Insufficient staff numbers affect considerably the quality of services that are being provided; therefore, users who have difficulty moving or are unable to move independently, are usually not encouraged to get out of bed. In certain rooms, there is not enough space for a wheelchair to pass through a doorway. In order to maintain good quality of life, it is particularly important for disabled persons not to spend the whole time in bed, but that they are provided with a possibility to be transferred into a wheelchair and taken to common rooms where they can socialize and participate in group leisure activities. Although this is the wish of some disabled users staying in the home in Zadar, due to staff shortage, they think chances are too small to talk to anyone about this. Therefore, all systematized job positions should be filled and accommodation conditions aligned with prescribed minimum standards. People with severe dementia, staying in the closed ward of the Home for the Elderly and Disabled in Split, are deprived of the possibility to spend time in the fresh air and they are allowed to go for a walk only when their family comes for a visit. This is also a consequence of staff shortage, which is unacceptable.

We continue to record cases which involve doors being left open and/or failure to use screens while users are being tended to in rooms or bathrooms, which undermines their privacy and may have a degrading impact, which is something employees must pay special attention to.

Some homes have locked wards, where persons who may not leave the premises of their own accord are placed; however, legal basis for this type of accommodation does not exist. If some patients need special protection or placement in this type of *de facto* closed wards, due to severity of their mental illness, such is for example dementia caused by Alzheimer's disease, then this is something that should be legally regulated.

Only one article of the Act on Protection of Persons with Mental Disorders regulates the question of use of means of coercion in social care institutions, pursuant to which they may be used only in case of persons suffering from more severe mental disorders and this under conditions and in the manner determined by the relevant psychiatric institution. According to

Even though measures of isolation, physical restraint and chemical restraint are used very rarely in social care institutions, failure to follow the legally prescribed procedures represents violation of rights of a person with serious mental disorders.

data from the Ministry for Demography, Family, Youth and Social Policy regarding means of coercion, which they call restrictive procedures, it is clear that they are not applied under the same conditions and in the same manner as those in psychiatric institutions. Decisions are not always passed in written form and in cases of emergency, phone consultations with

psychiatrists cannot replace the patient being directly examined. Institutions do not employ psychiatrists, but conclude piecemeal agreements with them, which is the reason why they are not allowed to follow the prescribed procedure of use of means of coercion. Even though

measures of isolation, physical restraint and chemical restraint are used very rarely in social care institutions, failure to follow the legally prescribed procedures represents violation of rights of a person with serious mental disorders. In addition, in social care institutions, in order to prevent users from falling, different safety measures are employed, such as that of immobilizing and restraining users while asleep; on the other hand, for the purpose of preventing or eliminating negative forms of behaviour, “educational” measure of partial or complete prohibition of leaving the institution without being accompanied, is imposed. Therefore, it is necessary to regulate the use of means of coercion in social care institutions, but also to regulate the manner in which security measures are being implemented, which include bed-rails to prevent fall, wheelchair seatbelt and alike, the purpose of which is raising the person’s security level, with minimum restriction of freedom of movement.

b) Other social care institutions

In 2016, we also visited other social care institutions which are at risk of limiting persons’ freedom of movement: Home for Adults in Trogir and Home for Children and Youth in Split. Home for Adults in Trogir is an institution for mentally ill adults and Home for Children and Youth is a social care institution for children and youth with behavioural problems.

During our visits to the said institutions, we received no complaints regarding treatment by employees of the Home for Adults; however, accommodation conditions have not been completely aligned with the prescribed standards. As a result, despite the maximum number of beds being three, there are seven in the Special Care Unit. The Home is overcrowded, especially the unit where women are situated, whereas deinstitutionalization and transformation plan foresees reduction of its users’ number and investing stronger effort in preparing them for independent life.

In Home for Children and Youth in Split, we devoted special attention to the Reception Unit, where freedom of movement is limited and where children found wandering, unsupervised by parents or other adults, are detained for no longer than 72 hours. In addition, in emergency situations, service of temporary accommodation is also provided to unaccompanied children, foreign citizens aged between 14 and 18, who stay there until another means for accommodating them has been found, which may last for no longer than six months. No cases of inhuman or degrading treatment have been registered in the Home; nevertheless, Reception Unit is in a dilapidated condition and it is deprived of any type of equipment for leisure activities.

5. APPLICANTS FOR INTERNATIONAL PROTECTION AND IRREGULAR MIGRANTS

Mass movement of refugees and migrants – the largest in Europe since the Second World War – marked the end of 2015 and beginning of 2016 and revealed a series of deficiencies in the system of migration management as well as the concept of Common European Asylum System. During that period, 658,068 people, who had been identified as refugees and who were allowed

to continue their journey towards their preferred destination countries, passed through the territory of the Republic of Croatia. The reasons for such conduct by the Republic of Croatia and other countries of the so-called Balkan Route, were the fact that 93.4% of these people were citizens of unsafe countries ravaged by war, that destination countries were willing to receive the refugees despite the existing normative framework – especially Dublin Regulation – as well as the fact that the countries where they first entered could not bear such strong migration pressure. On the other hand, measures by means of which European Commission tried to contribute to crisis resolution and which involved permanent mechanism for resettling refugees, common list of safe countries of origin and efficient policy of returning irregular migrants, turned out to be seriously lacking, considering the daily influx of people. Therefore, in March 2016, EU and Turkey concluded a deal on Turkey tightening its borders in order to halt the flows of refugees and migrants who are moving along this route and to prevent their entering the EU.

When the EU introduced the so-called open-door policy, which enabled free transit for almost one million people, problems, especially those pertaining to human rights protection, came to the fore in transit and destination countries. Large flow of people caused changes in international relations and relations between neighbouring countries, since the former has become the source of dispute between countries they are being relocated from and those they are being relocated to. The fact that mixed migration flows included different categories of people who had decided to leave their countries of origin for different reasons, who moved and crossed state borders irregularly, without adequate documentation, was referred to as a reason for introducing strict border control and as an explanation for security problems in receiving states. As a result, in the public arena, terrorist attacks that had occurred in some countries were unfortunately directly linked to the newest migrant movements, instead of with their actual and more complicated roots, among which are unsuccessfully implemented integration measures, which is something we deal with in greater detail in the chapter on discrimination based on race, ethnicity or skin colour and national origin.

In the public arena of some receiving countries, terrorist attacks were unfortunately linked exclusively to the latest migration movements, not to their actual and more complicated roots, among which are unsuccessfully implemented integration measures.

Following EU-Turkey deal, for the sake of ensuring more efficient protection of its state border, which is also the external border of the EU, the Republic of Croatia in an urgent procedure and without holding a public hearing, adopted Act on Amendments to the State Border Protection Act and Act on Amendments to the Act on Defence. The said amendments lay down that the police may be supported by armed forces for the purpose of protecting state borders. Such decision is reached by the Government at the proposal of the Minister of Defence and with previous consent from the President of the Republic of Croatia. The manner in which the said amendments had been adopted as well as their content, initiated proposals for assessing their compliance with the Constitution. Namely, the role of armed forces is to protect sovereignty

and independence of the Republic of Croatia and defend its territorial integrity; in addition, armed forces may function as a support to the police only in cases foreseen by the Constitution: state of war, immediate danger to the independence and unity of the Republic of Croatia, in the event of any major natural disaster, during state of war, in case of immediate threat to independence, unity and continuity of the state or when government bodies are prevented from performing their constitutional duties, including as aid in firefighting, rescue operations as well as surveillance and protection of the rights of the Republic of Croatia at sea. They may not function as support when dealing with pressure of migration movements, as stated in the justification of amendments. Such manner of conduct shows that the state is more inclined to protecting and controlling its borders than to protecting refugees' human rights.

Besides closure of borders, EU-Turkey deal from March 2016, resulted in an altered approach towards persons moving along the so-called Balkan Route. After accord was concluded, people had to seek international protection in the country that they found themselves in or were attributed the status of irregular migrants. One of the consequences of such an abrupt change were insufficient reception capacities, in particular for those whose freedom of movement had been restricted, but also for those belonging to the vulnerable group of irregular migrants waiting for implementation of measures ensuring their return to countries of origin or safe countries. Therefore, in order to ensure stronger protection against torture and other cruel, inhuman or degrading treatment or punishment as well as to gain the best possible insight in the extent to which their rights are being respected, NPM visited Winter Transit Centre in Slavonski Brod (WTC SB), Foreigners Reception Centre in Ježevo (FRCJ), Reception Facility for Asylum Seekers in Zagreb (RFAS Zagreb) and Kutina (RFAS Kutina) as well as Vukovar-Srijem County Police Administration.

During our visit, we noticed a series of difficulties faced by applicants for international protection and irregular migrants when trying to exercise their rights, which are especially reflected in cases of limiting their freedom of movement, as a result of which they had been put in a particularly vulnerable position. Apart from inability to understand the language in which the procedure was conducted, limited right

Apart from inability to understand the language in which the procedure was conducted, limited right to free legal aid, as well as insufficient and untimely judicial protection provided within the procedures limiting their freedom of movement, another problem was organization of healthcare services in accommodation centres as well as ensuring additional scope of healthcare.

to free legal aid, as well as insufficient and untimely judicial protection provided within those procedures, another problem was organization of healthcare services.

In the Republic of Croatia, 320 persons remained in WTC SB, after closing of the so-called Balkan Route. Following closure of the procedure initiated on the basis of the Foreigners Act, they were delivered a return decision, accompanied by the pronounced measure of prohibition to leave WTC SB. Formally and legally speaking, this represented an alternative to detention measure; however, conditions under which they were detained, were *de facto* those of

detention. Namely, they were accommodated in several sectors that had been divided by a wire fence, equipped with sleeping and personal hygiene containers. In addition, they were not allowed to leave their respective sectors, within which they were being supervised by police officers. Medical assistance, which was provided in the presence of police officers, was available at request. Besides their freedom of movement being restricted in accommodation conditions that were inadequate and incompatible with CPT standards, particularly worrying was the fact that their freedom was being restricted with no valid legal basis. What is more, similar problems occurred in other countries that opened “hotspots” intended for long-term stay. WTC SB was closed on 15 April and persons that had hitherto been located in Slavonski Brod, were transferred either to FRCJ or RFAS Zagreb and Kutina, depending on their status.

In the process of reaching decision on deportation, within the framework of which it is also decided whether irregular migrants’ freedom of movement shall be restricted, Vukovar-Srijem Police Administration faced lack of sufficient translation services and refugees were provided with limited free legal aid. In Županja and Tovarnik Police Stations and Border Police Station Bajakovo, the procedure of reaching decisions on deportation, return and freedom of movement restriction by placement in FRCJ, was sometimes conducted without the presence of a translator to the language for which it can reasonably be assumed that it is understood by parties and in which they are able to communicate in. What is particularly worrying is interpretation of the Ordinance on the Treatment of Foreigners, stipulating that within the return procedure, a foreigner who does not understand the Croatian language may also be communicated with the aid of technical tools, and this if there are no interpreters for the language he or she understands in the Republic of Croatia and if it is possible to conclude that the person has agreed to this type of communication. However, police officials regularly used this possibility when interpreters from the list were unable to come to the police station and the tool that they used the most often was Google Translate. What is more, even though police stations dispose of a list of certified interpreters, there were cases of police officials conducting procedures in the English language and of foreigners acting as interpreters, who, despite minimum ability to understand English, interpreted to others. Among many questions that arise within this context, the one that is particularly prominent is to what extent instructions on legal remedy are understood.

Due to wrong interpretation of the Ordinance and involvement in translation activities without the help of a certified interpreter, irregular migrants were insufficiently informed either about their rights within the procedure or free legal aid.

Due to wrong interpretation of the Ordinance and involvement in translation activities without the help of a certified interpreter, irregular migrants were insufficiently informed either about their rights within the procedure or free legal aid. Although it is possible to assume that they were informed about the

grounds on which they had been arrested, about their right to engage an attorney and that they were aware of the possibility of submitting a request for free legal aid, given that files contain forms with their signatures on them – albeit in the Croatian language, it remains

debatable to what extent they understood what they were signing. Either foreigners' signatures on the forms should certainly be accompanied by that of the interpreter or forms should be drafted in a bilingual form.

Free legal aid is prescribed by the Foreigners Act and Ordinance on Free Legal Aid in the Procedure of Expulsion of Foreigners, and it implies assistance in drafting the statement of claim and engagement of a representative before the Administrative Court. It is granted only within the procedure of deciding upon expulsion and/or return of persons with illegal residence or short-term residence, and this unless they possess things of greater value or sufficient financial means or if it has been estimated beforehand that the procedure before an administrative court will not be ended favourably. However, what violates their rights is the fact that right to free legal aid is foreseen only in cases of expulsion or return – not in cases of freedom of movement restriction – and what is particularly unacceptable is for the Ministry of the Interior to prejudice against the manner in which administrative case in question might be resolved, which as a result affects their right to free legal aid.

Availability of adequate translation services and of free legal aid is particularly important in the procedures of deciding upon expulsion and freedom restriction by placement in FRCJ. Namely, if an irregular migrant has not been informed on his or her rights, especially the ones regarding legal remedy, and does not initiate administrative proceedings, the court will have no knowledge about the fact that his or her movement has been restricted, until ten days prior to the expiry of three months since the day of being placed in FRCJ. According to the Constitution, human liberty and personality are inviolable and no one shall be deprived of liberty, nor may such liberty be restricted, except when specified by law, upon which a court shall decide within reasonable time limit, which the above-mentioned time limit, as referred to in the Foreigners Act is certainly not. In addition, CPT standards recommend that irregular migrants whose freedom of movement has been restricted, must have at their disposal an effective legal remedy, which enables legality of their deprivation of liberty to be decided upon by a court, within a short period of time.

Within the procedure of freedom of movement restriction, decision should be made on the basis of individual estimation, in order to avoid the reason for detention of vulnerable groups, especially families with children, to be lack of open centres.

Besides, within the procedure of freedom of movement restriction, decision should be made on the basis of individual assessment, in order to avoid the reason for detention of vulnerable groups, especially families with children, to be lack of open centres. Even though National Programme of the Asylum, Migration and Integration Fund, sets out organizing open-type accommodation, not a single

new centre has been opened as yet, and except for a case of short-term placement of vulnerable groups of irregular migrants in one section of RFAS in Zagreb – which stopped after increase in the number of applicants for international protection – people are not provided with this type of accommodation any longer. In situations when FRCJ is full and when there are no open centres available, irregular migrants who dispose of no identification documents or

monetary instruments, are delivered a decision on return with the time limit until the expiry of which they must leave EEA. However, the questions that remain unanswered are the following: how they are able to comply with the deadline, how they can obtain necessary documentation and where they may be accommodated during the said period, since they have no money and since their situation is yet more difficult if diplomatic or consular authorities of their countries of origin do not exist in the Republic of Croatia.

Irregular migrant whose freedom of movement has been restricted following his or her placement in FRCJ, is obligated to cover accommodation expenses as well as other expenses that occurred during forcible removal; and, for the purpose of payment, his financial means are seized. The same course of action is undertaken in case of irregular migrants who have been discharged from FRCJ, but have not been subject to forcible removal and who are waiting for their status to be resolved with no or considerably reduced means of livelihood, deprived of possibility to find accommodation and accompanied by great difficulties in realizing their social care rights (very restricted right to one-off compensation and approval of temporary accommodation), which is something Croatia has been warned about by CoE Commissioner for Human Rights.

Consequently, it is necessary to act promptly and amend the existing legislation regarding irregular migrants and applicants for international protection, in order for the scope of their rights to be broadened and improved and in order for obstacles in their exercising to be removed. However, procedure for adopting proposal for Amendments to the Foreigners Act, initiated in April 2016, has not yet been completed, and in December it was once again forwarded to the Parliament and subject to parliamentary procedure; however, due to a series of amendments, it has not yet been adopted.

Even though when reaching a decision on freedom of movement restriction, method of individual evaluation should be used in order to consider whether the same goal can be reached by use of milder measures, this decision is reached without any such consideration. Thus, during our visit to FRCJ in April 2016, out of 91 persons whose freedom of movement had been restricted, 46 were applicants for international protection and based on decisions, it was not clear which criteria had been taken into account for individual estimation, except for a simple statement that imposing milder measures would be inefficient. During its visit to RFAS in Zagreb and Kutina, NPM established that no decision imposing a measure milder than detention had been reached within that same year. However, judging by the number of cases of freedom of movement restriction registered in the second part of the year and seven decisions obliging applicants to report to the Registration Centre at a specified time, it may be concluded that things have started to change.

Difficulties when it comes to exercising rights to healthcare by irregular migrants and seekers of international protection, have been noticed, as well as a narrow scope of recognized rights, in particular of vulnerable groups and persons whose freedom of movement has been restricted. Right to healthcare and the scope of this right are laid down in the Act on Mandatory Health Insurance and Health Care of Foreigners in the Republic of Croatia (AMHIHCF), which pertains mostly to the right to emergency medical assistance and right to diagnostic and therapeutic services necessary to eliminate immediate dangers to their life and health. The scope of right to healthcare provided to applicants who have been subject either to rape or any other aggravated form of violence, as well as to those with specific health needs, was planned to be determined by virtue of an ordinance, but it has been more than three years since the latter should have been adopted. Even though a procedure for adopting Amendments to AMHIHCF, which once again foresee passing of the said Ordinance, was initiated in June 2016, the said Amendments have not yet been adopted due to a series of difficulties. Pursuant to the planned Amendments, healthcare for pregnant women and children is still at the level of the right to emergency medical assistance, which is not in compliance with the Convention on the Rights of the Child and Convention on the Elimination of All Forms of Discrimination against Women, based on which all pregnant women should have the right to free prenatal, intranatal and postnatal care, whereas children should have the same right to healthcare as the country's citizens, which would include vaccinations.

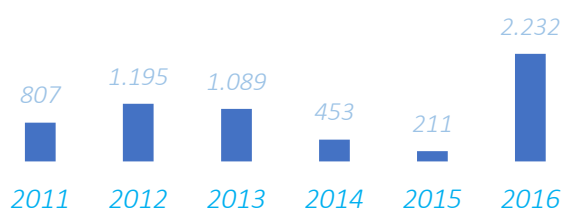
The scope of right to healthcare provided to seekers who have been subject either to rape or any other aggravated form of violence, as well as to those with specific health needs, was planned to be determined by virtue of an ordinance, but it has been more than three years since the latter should have been adopted.

A series of difficulties have also been noticed regarding the extent to which irregular migrants whose freedom of movement has been restricted and applicants for international protection exercise their right to healthcare. In FRCJ, there was one team of general/family medicine doctors that visited the centre twice a week, despite the fact that according to CPT standards, assessing health condition of irregular migrants whose freedom of movement has been restricted, should be a priority, given the series of factors that may have a negative impact on their health. In addition, the Centre should have at least one healthcare professional who would be available every day. In RFAS Zagreb and Kutina, among difficulties pertaining to exercise of right to healthcare by applicants for international protection, was the manner in which visits to hospitals and community health centres were organized as well as provision of accompaniment and translation services. Ministry of Health tried to overcome these difficulties by concluding agreements with the community health centres in Kutina and Zagreb, based on which one team of general/family medicine doctors would provide daily healthcare services on the premises of the Centre, which eventually failed due to lack of available physicians. In RFAS Zagreb, the physician would visit the premises twice a week, whereas in the meantime, it was security guards who were responsible for calling an ambulance, while volunteers and Jesuit Refugee Service (JRS) members accompanied them to hospitals or health community centres. In

addition, due to insufficient scope of healthcare coverage available to applicants for international protection, in 2016, JRS covered the expenses of gynaecological examinations as well as ophthalmologic, orthopaedic and paediatric check-ups. Difficulties regarding exercise of right to healthcare became even more prominent when even though RFAS Zagreb was working at full capacity, doctors' services were not available on a daily basis. The situation was resolved with the help of the organization Doctors of the World, which in turn started to provide healthcare services to applicants for international protection. In RFAS Kutina, physician did not make visits in accordance with the agreement, but at the request of an official of the Ministry of the Interior. For the purpose of providing international protection applicants with specific health care issues, with psychosocial support services, Ministry of Health concluded an agreement with Neuropsychiatric Hospital "Dr. Ivan Barbot", pursuant to which a psychiatrist had to make four visits a month to RFAS Kutina; however, due to their specific health problems, when needed, healthcare was provided within hospitals as well as with the help of CSOs, which pursuant to agreements concluded with the Ministry of the Interior, provided the applicants with psychosocial assistance and support.

Consequently, it is insufficient and unacceptable for the right to healthcare to be merely regulated by passing of laws; instead, it is important to have good organizational structure and remove obstacles that hinder exercise of this right. It is particularly important for international protection applicants to be provided with translation services while undergoing medical examination, especially specialist medical examinations.

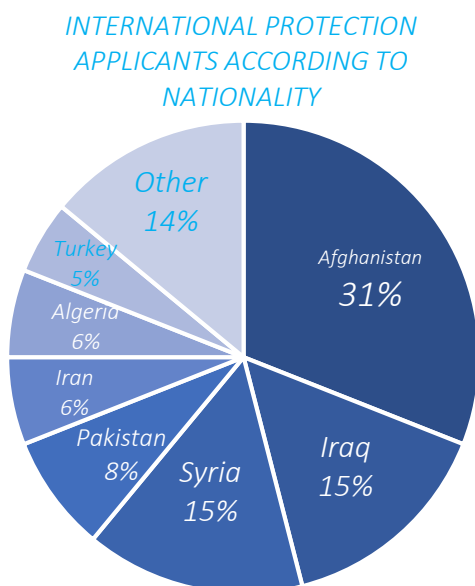
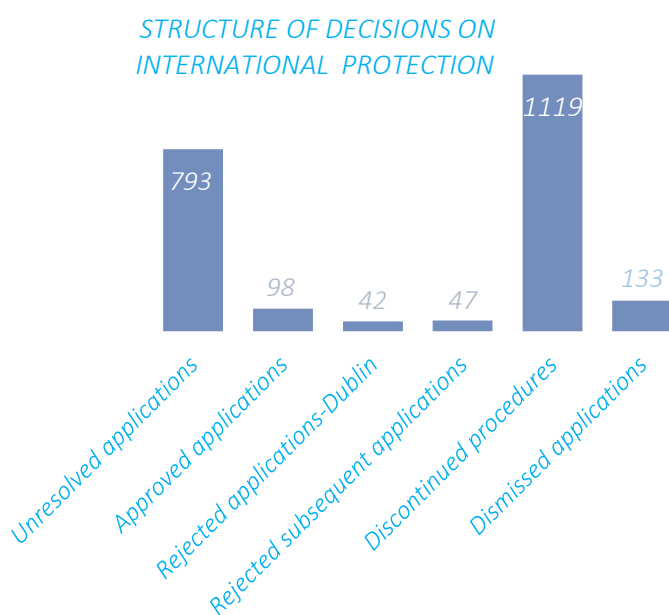
NUMBER OF INTERNATIONAL PROTECTION APPLICANTS IN THE REPUBLIC OF CROATIA



Considering that in 2016, in the Republic of Croatia, 4,496 irregular migrants were found, 584 had their freedom of movement restricted after being placed into FRCJ, 271 were forcibly removed from FRCJ, that pursuant to the Foreigners Act, 560 people were forcibly removed from other police administrations and that

3,055 decisions on return were issued, 910 of which were implemented, it is clear that there is a large number of people whose rights have potentially been negatively affected. At the same time, it is particularly important to take into account the increase in the number of international protection applicants in the Republic of Croatia in 2016.

Namely, after several years marked by a drop in the number of international protection applicants in the Republic of Croatia, as a consequence of large migratory movements, in 2016, this number went through a dramatic increase of 957% in



comparison to 2015. At the same time, along with reduction in the number of discontinued procedures (50.13%), there was an increase in the number of procedures within which application has not been decided upon, as a result of which relation between the number of discontinued, positive and negative decisions may be considerably altered. Increased number of cases within which a decision has not been reached as well as general increase in the number of submitted applications, is an issue that may be considered from the perspective of amendments to the Act on International and Temporary Protection, pursuant to which and contrary to the Asylum Act, persons are granted the status of international protection applicants on the date of announcing their intention to do so, not on the date of submitting their application. More specifically, pursuant to the Asylum Act, persons who express their intention to seek asylum (international protection), remain under the status of irregular migrants until they have submitted their application and thus initiated an administrative procedure. Early granting of the applicant status implies the obligation to pass decisions on discontinuation not only for those who leave the Centre before the decision has been reached, but also for all those who do not even come to the Reception Centre. Such amendments to legal regulations have resulted not only in insufficient numbers of the Ministry of the Interior's staff capable of passing decisions, steeply increased number of applicants, but also prolongation of time necessary for the decision to be reached as well as rise in the number of unresolved applications.

If we take into account data on the number of applicants with respect to the place where they announced their intention to apply for international protection (705 persons in the Airport Police Station Pleso, 306 persons in Border Police Station Slavonski Brod after closure of the so-called Balkan Route, and 31 persons in Osijek-Baranja and Vukovar-Srijem Police

Administrations), it is clear that in most cases, they announce their intention to seek international protection after being caught while engaged in irregular stay. Along with high percentage of procedures discontinued on the grounds of leaving or failing to arrive in the Reception Centre, the above-mentioned points to the fact that the Republic of Croatia is still a transit country for applicants.

In 2016, all countries forming part of the migration routes towards the EU, started to express doubt regarding the possibility of refugees being distributed according to the principle of solidarity, because such manner of distribution turned out as slow and ineffective.

Pursuant to the Decision of the Government of the Republic of Croatia on Relocation and Resettlement of Third Country Nationals or Stateless Persons who Meet Conditions for International Protection, in 2016, 19 persons have been relocated in the Republic of Croatia. Members of two families of five from Syria and nine citizens of Eritrea have been granted asylum status, whereas procedures regarding another five are still pending. Considering that 550 refugees must be relocated by the end of 2017, the process whereby only 19 persons have been relocated within one year, seems slow and inefficient. In addition, Operational Plan drafted for the purpose of implementing this Decision, which should have clarified the role of specific government bodies, was not adopted in 2016. Given the slow relocation process, considerable amount of time necessary for Operational Plan to be adopted, integration difficulties as well as large number of applications that have not been decided upon in 2016, it remains unclear how Government Decision shall be implemented by the end of 2017.

Distrust of countries along the migration route when it comes to distribution of refugees and migrants, is additionally supported by the fact that European Commission proposal for obligatory relocation has not been supported by the majority of member states. Given the full reapplication of Dublin procedure, as well as renewed responsibility of countries of entry to decide upon applications for international protection or for implementing security return measures, since March 2016, countries along the so-called Balkan Route, including the Republic of Croatia, started to tighten their border control, which to a great extent implied increased number of police officers and soldiers and construction of razor-wire fences. This resulted not only in drop in the number of caught irregular migrants, but also in rise in the number of those who have risked their lives by falling prey to smugglers whereas for all those who wish to apply for international protection, the access to it has either been denied or made more difficult.

It is necessary to clearly emphasize that responsibility for treatments contrary to Article 3 of ECHR is borne not only by perpetrators, but also those who knew or should have known about such treatments, but failed to prevent or report them.

Along with tightened border control, in late 2016, civil society organizations and the media made certain allegations on persons who were being returned to Serbia without conducted procedure foreseen by the Foreigners Act, within the framework of which, depending on the measure employed for the purpose of ensuring the person's return, a decision should have been reached and

which should have entailed an individual approach as well as availability of translation services. However, according to data available, several hundreds of people were returned to Serbia without such procedure having been conducted. Many of them witnessed that although they wished to apply for international protection, they had been prevented from doing so; instead, they were immediately treated as irregular migrants; and, in addition, when being returned, procedure foreseen by the Foreigners Act had not been complied with. What is more, documented complaints contain allegations that they were beaten by Croatian police officers with batons, forced to take off their shoes and kneel or stand in the snow, and forced to pass through a police cordon, while being exposed to blows and insults. In such situations, they were not allowed to speak and there are testimonies that their valuables, including money and mobile phones, had been confiscated. Considering the number and content of those complaints, which also contain information on exact dates and places where state border had been crossed as well as medical documentation, such treatment by police officers may represent infringement of Article 3 of ECHR, according to which no one must be subjected to torture or to inhuman or degrading treatment or punishment.

It is utterly unacceptable that those who should protect and preserve human rights be identified as those responsible for their violation – which is the case in a series of statements – and that an immediate and efficient investigation is not initiated in line with the requirements of Article 3 of ECHR. In addition, CPT standards from 2015 emphasize that it is necessary to clearly understand that responsibility for illegal treatment includes not only perpetrators, but also those who knew or should have known about such treatment and failed to prevent or report it. It is of particular importance to achieve balance between the right of a country to control its borders and its obligation to comply with international and European standards regarding human rights protection, especially Refugee Convention and its Protocol, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Covenant on Civil and Political Rights and ECHR.

Contrary to the above-mentioned, having been warned about the need to apply an individual approach, Ministry of the Interior stated that procedures foreseen by the law are regularly implemented, that all human rights of refugees are respected in accordance with the Universal Declaration of Human Rights, and that trainings of police officers on the protection of migrants are being organized, as well as that increased number of police officers at the border with Serbia is directed primarily at border protection and prevention of illegal entries.

However, considering everything previously mentioned, only efficient investigation and prosecution of all persons responsible for illegal treatment, would enable protection of human rights of all refugees and migrants and prevent the possibility of such treatment occurring in the future.

Migration policy

When it comes to adopting a comprehensive approach to the problem of migrations, Migration Policy of the Republic of Croatia is particularly important; however, Migration Policy for the period 2016-2018 has not yet been adopted even though a commission composed of representatives of competent bodies was established. The reason for this was low quality of comments based on which document proposal could not have been drafted. Besides, during the course of 2016, Ministry of the Interior failed to take any other steps, despite the fact that migrations had been defined as one of foreign policy priorities of the Republic of Croatia, primarily because they affect all segments of social development.

Due to all identified difficulties that irregular migrants and applicants for international protection are faced with when trying to exercise their rights, it is certainly important to enhance the existing legal framework, to improve practice within the existing system, but also to adopt a new migration policy, in order to establish a systematic approach when it comes to the issue of migrations, with the aim of enabling state bodies and other stakeholders to act in a timely and harmonized manner when attempting to find effective responses to positive and negative effects of migration movements.

In 2017, if projects that are planned to be financed by the Asylum, Migration and Integration Fund are realized, all problems regarding exercise of rights of irregular migrants and applicants for international protection, should be mitigated. The mentioned projects pertain to monitoring forcible removals, ensuring translation services and expanding the network of available translators and court interpreters, encouraging assisted voluntary return, building additional open-type accommodation capacities – the so-called alternative detention – and providing psychosocial assistance to applicants for international protection.

6. INTERNATIONAL COOPERATION AND CAPACITIES FOR PERFORMING NPM TASKS

International cooperation

Last year, we participated in three meetings of National Preventive Mechanisms of South-East Europe Network, focusing on visits made to homes for the elderly and preventive protection of refugees' rights in countries of South-East Europe. In Thessaloniki, we participated in a workshop on ombudsman common regional plan for resolving refugee crisis, whereas in Vienna, we participated in the training on monitoring forcible removals in the organization of FRA and Frontex. In Vienna, we also participated in a workshop on mutual cooperation between NPMs and judges in their work with people deprived of their liberty, especially when it comes to implementing EU legislation. Furthermore, we hosted representatives of Georgian NPM with the aim of exchanging experiences in connection with monitoring implementation of recommendations and instruments that are used during visits; moreover, we made joint visits to Zagreb County Prison, Zagreb Police Administration and FRCJ. We also visited the Slovenian

NPM, in order to exchange experiences and practice regarding preventive visits to homes for the elderly, on which occasion we visited homes in Celje and Krško. In addition, on the occasion of 10th anniversary of OPCAT, in collaboration with Ludwig Boltzmann Institute, CoE and Swiss Federal Department of Foreign Affairs, we organized a conference in Zagreb, gathering NPM representatives from 13 countries. Discussed subjects included implementation of the Mandela Rules, stronger monitoring of implementation of recommendations and the role of NPM in protection of refugees' and irregular migrants' rights.

Capacities of the Office of the Ombudswoman for the performance of tasks of the NPM

In 2016, NPM tasks were performed by seven advisers who also acted upon complaints submitted by persons deprived of their liberty, while in early December, Deputy Ombudsman, in charge of the Department for Persons Deprived of Liberty and the NPM, was relieved of his duties.

The State Budget for 2015 provided HRK 138,781.00 for a special activity under the budget of the Office of the Ombudswoman, which was dedicated to the performance of tasks of the NPM, which is 5.9% more than in 2015, when the same sum amounted to HRK 131,000.00. The same amount of State Budget is foreseen for 2017, not including expenditure for employees. However, in 2017, we plan to employ one more Adviser in the Department for National Preventive Mechanism and Persons Deprived of Liberty, whereby the Department shall have stronger capacities for resolving complaints submitted by citizens as well as for visiting different institutions, along with the forthcoming appointment of a new Deputy Ombudswoman who will be in charge of the Department.

II. RECOMMENDATIONS:

Persons deprived of their liberty who are in the prison system:

- 1. To the Ministry of Justice, to adapt accommodation conditions in all penal institutions to comply with legal and international standards;*
- 2. To the Ministry of Justice, to investigate in detail all allegations indicating possible torture and inhuman or degrading treatment, including allegations of verbal abuse and use of excessive force;*
- 3. To the Ministry of Justice, to adopt a new Act on Execution of the Prison Sentence;*
- 4. To the Ministry of Justice, to fill systematized job positions in penal institutions;*
- 5. To the Ministry of Health and Ministry of Justice, to provide all prisoners who meet the requirements with supplementary health insurance at the expense of the State Budget;*
- 6. To the Ministry of Justice, to align premises and equipment of infirmaries in penal institutions with the Ordinance on Minimum Standards regarding Premises, Staff and*

Medical-Technical Equipment of a Medical Institution Providing Healthcare to Persons Deprived of Their Liberty;

7. *To the Ministry of Justice and Ministry of Health, to prepare amendments to legal regulations enabling healthcare of prisoners to be integrated into the public healthcare system;*

Protection of citizens' rights, including persons deprived of their liberty, in treatment by the police:

8. *To the Government of the Republic of Croatia, to establish efficient civilian policing oversight;*
9. *To the Ministry of the Interior, to ensure that police officers apply police powers in such a way that they interfere as little as possible with human rights and freedoms;*
10. *To the Ministry of the Interior, to ensure that police officers treat vulnerable groups of citizens with special care;*
11. *To the Ministry of the Interior, to ensure that means of coercion are applied only to the extent is necessary in order for the purpose of treatment to be realized;*
12. *To the Ministry of the Interior and Police Directorate, to make assessment of justifiability and legality of the use of means of coercion within 24 hours from receipt of written report;*
13. *To the Ministry of the Interior, to harmonize time limit for storage of video recordings in all police stations with the time limit for submission of citizens' complaints regarding treatment by police officers;*
14. *To the Ministry of the Interior and Police Directorate, to adapt accommodation conditions in rooms for persons deprived of their liberty to comply with international and legal standards;*
15. *To the Ministry of the Interior and Police Directorate, to ensure financial means for meals of persons deprived of their liberty;*
16. *To the Ministry of the Interior and Police Directorate, to deliver instructions to police stations regarding application of special measure of placement of the perpetrator until opioid has ceased to have effect, when conditions for arrest have been fulfilled pursuant to the Misdemeanour Act;*
17. *To the Ministry of the Interior and Police Directorate, to organize work processes in such a way that detention supervisors might be focused only on this one duty and that they do not perform tasks in the operations and communications centre;*

Persons with mental disorders who are in psychiatric institutions:

18. *To the Ministry of Health, to harmonize accommodation conditions in all psychiatric wards with international and legal standards;*

19. *To the Ministry of Justice and Ministry of Health, to make a proposal for drafting amendments whereby means for covering expenses of involuntary confinement and institutionalization in a psychiatric institution shall be provided from the State Budget;*
20. *To the Ministry of Health and Ministry of Justice, to ensure that records on application of means of coercion are kept by all psychiatric wards;*

Restriction of freedom of movement in social care institutions:

21. *To the Ministry for Demography, Family, Youth and Social Policy, to prepare amendments whereby accommodation within departments of social care institutions for persons who are unable to leave them willingly, would be regulated;*
22. *To the Ministry of Justice and Ministry for Demography, Family, Youth and Social Policy, to make a list of types and methods of applying security measures within social care institutions;*

Applicants for International Protection and Irregular Migrants:

23. *To the Ministry of Health, to ensure provision of healthcare services in such a way that one team of general/family medicine be available in FRCJ on working days;*
24. *To the Ministry of Health, to ensure teams of family/general medicine that would come to RFAS Zagreb and Kutina, pursuant to the concluded agreements with community health centres;*
25. *To the Ministry of Health, to ensure that therapy in FRCJ and RFAS is distributed by healthcare professionals;*
26. *To the Ministry of Health, to adopt, in the minimum amount of time, an ordinance regulating the scope of right to healthcare for applicants who have been subject to torture, rape or any other aggravated form of violence, as well as for those with specific health needs;*
27. *To the Ministry of Health, to prepare amendments to AMHIHCF ensuring larger scope of right to healthcare for women and children;*
28. *To the Ministry of the Interior, to ensure that Foreigners Act clearly defines criteria for freedom of movement restriction by placement into FRCJ, regulates the obligation of assessing the possibility of application of milder measures as well as the obligation to ensure accommodation in open centres for vulnerable groups of migrants;*
29. *To the Ministry of the Interior, to promptly ensure the necessary number of open centres for adequate accommodation of vulnerable groups of migrants;*
30. *To the Ministry of the Interior, to make a proposal for amendments to the Foreigners Act, ensuring that during the course of procedure within which their freedom of movement is restricted, irregular migrants be completely informed on their legal position in the language that they understand;*

31. *To the Ministry of the Interior, to ensure prompt delivery of case file on freedom of movement restriction to the administrative court, so that possible deprivation of liberty may be legally based;*
32. *To the Ministry of the Interior, to ensure that within the process of reaching decision on freedom of movement restriction, criteria of necessity, proportionality and justifiability are fulfilled;*
33. *To the Ministry of the Interior, to increase staff numbers of the Asylum Department in order to accelerate the decision-making process in response to filed applications for international protection;*
34. *To the Ministry of the Interior, to promptly undertake measures for adopting new migration policy;*
35. *To the Ministry of the Interior, to promptly initiate an investigation regarding return of irregular migrants to Serbia without prescribed legal procedure or individual process, as well as regarding treatment by police officers that may represent infringement of Article 3 of ECHR.*

III. CONCLUSION

The state of human rights of persons deprived of their liberty, and those who are not allowed to leave a facility under public supervision on their own accord, has not significantly changed—during 2016. On the positive side, we have found no treatment or conditions that could represent torture. However, it is necessary to as soon as possible eliminate systemic shortcomings that endanger or violate constitutional and legal rights of these persons or expose them to degrading or even inhuman treatment.

Persons deprived of their liberty in the prison system mostly complained about the quality of healthcare, which should be integrated into the public healthcare system. It is also necessary to align the accommodation conditions in prisons with the international standards and fill the systematized job positions, since the lack of prison staff affects the treatment of prisoners and the realisation of their rights, as well as the level of security. Numerous complaints have been filed on the treatment by judicial police officers, insufficient legal protection and the work of the Treatment Department for Prisoners.

A significant number of cases were related to the treatment by police officers, and complaints filed by the elderly are especially worrying. It is necessary to ensure that the application of police powers interferes as little as possible with human rights and freedoms, but also to establish efficient civilian policing oversight. The accommodation conditions need to be aligned with the international standards, which is still not the case.

During our visit to psychiatric institutions we have found treatment that can be degrading or even inhuman like enforcing the measure of restraint in utterly inadequate conditions in the isolation room. There have been positive developments in accommodation conditions, but in many departments they are still unacceptable. In addition, some persons with mental disorders have to participate in the expenses of involuntary confinement and involuntary hospitalization, which is unacceptable, and these costs should be covered from the State Budget.

In order to ensure stronger protection of the elderly in the homes for the elderly and disabled, it is necessary to employ sufficient number of staff and educate them on human rights. Sometimes the person is placed in the home without his or her explicit consent, and more attention should also be paid to the respect for privacy.

The number of applicants for international protection has risen by 957% in comparison to 2015 which has, along with the changes in legislation, prolonged the time necessary to reach the decision and increased the number of unresolved applications. In the process of relocation of refugees within the EU, in line with the principle of solidarity, only 19 persons have been relocated to Croatia. This number, in addition to the high percentage of those who leave the country before the end of the procedure, shows that Croatia is still not a destination country. Applicants for international protection and irregular migrants should be provided with the access to free legal aid, as well as with the adequate healthcare protection, since it mostly includes only emergency medical assistance and diagnostic and therapeutic services necessary to eliminate immediate dangers to their life and health. It is necessary to effectively investigate all claims regarding the returns to Serbia without applying the individual process, as well as those regarding police violence.

For all the problems we have noted with the respect for human rights of persons deprived of their liberty or those with the limited freedom of movement, we have made a number of recommendations and hope their implementation will soon follow.